



SEN. EMILY ANN CAIN, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

SEN. ROGER KATZ
SEN. DAVID C. BURNS
SEN. MARGARET M. CRAVEN
SEN. CHRISTOPHER K. JOHNSON
SEN. EDWARD M. YOUNGBLOOD
REP. PAUL T. DAVIS, SR.
REP. ANDREA M. BOLAND
REP. H. DAVID COTTA
REP. LANCE E. HARVELL
REP. MATTHEW J. PETERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
March 28, 2014
Accepted April 11, 2014

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 1:10 p.m. in Room 334 State House.

ATTENDANCE

Senators: Sen. Cain, Sen. Burns, Sen. Craven, and Sen. Johnson
Joining the meeting in progress: Sen. Katz
Absent: Sen. Youngblood

Representatives: Rep. Kruger, Rep. Davis, Rep. Boland, Rep. Cotta, and
Rep. Peterson
Joining the meeting in progress: Rep. Harvell

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

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

Sen. Cain noted that the Committee received a lot of information at their March 14, 2014 meeting and she wanted again to thank and commend the Committee for the way that meeting went. She said it answered some of the members' questions and probably prompted more questions regarding OPEGA's Healthy Maine Partnerships Report and the Committee will discuss what additional information they would like to receive from OPEGA staff and how they want to move forward.

SUMMARY OF THE MARCH 14, 2014 GOC MEETING

The Meeting Summary of March 14, 2014 was accepted as written.

NEW BUSINESS

• GOC Discussion of OPEGA Project Priorities

Director Ashcroft said the GOC added a couple of projects to OPEGA's Work Plan and had discussed whether one or both of the review requests should be more of a priority than OPEGA's current work or any of the other reviews on OPEGA's Work Plan.

Director Ashcroft said OPEGA is still doing work on the **Healthy Maine Partnerships FY13 Contracts and Funding Report**. They also have the formal follow-up review of the **Office of Information Technology** ongoing that is to monitor and check in with OIT every few months of where they are on their action plan. The **Maine Economic Improvement Fund** review is in fieldwork and OPEGA is trying to get to the end of that work within the next two to three weeks and is hoping to release its Report in May. OPEGA has initiated the **State Lottery** review and that project is also in fieldwork. This review is being used as a filler for staff working on the MEIF project. Director Ashcroft said she has been working on the **Special Project with Tax Expenditure Programs** and will be talking to the Committee about it later in the meeting.

Director Ashcroft referred the Committee to OPEGA's Work Plan and the planned topics. The **DHHS Audit Functions** was assigned when the GOC started putting topics on OPEGA's Work Plan last year. OPEGA was going to look at the effectiveness of the audit functions in DHHS toward identifying and addressing fraud, waste and abuse in programs administered by the Department. A topic the GOC just added is **DHHS Licensing and Regulation of Child Care Providers** in DHHS, Bureau of Licensing and Regulatory Services with specific issues parsed out for possible review, including staffing and other resources for that effort and policies, as well as procedures and practices related to identified issues and complaints against child care providers. The **DHHS Workplace Culture and Environment** review had been added to OPEGA's Work Plan by the Committee earlier. Director Ashcroft believes this review will require hiring a consultant who has the expertise to assess an organization's culture and had talked with the GOC earlier regarding issuing an RFP for that work. The GOC also assigned OPEGA a formal **follow-up review on Health Care in Corrections System** which was to involve taking some cases for inmates who have had regular concerns reported by Advocacy Groups and then tracking that through with Maine Department of Corrections. The Committee will be talking about this topic later in their meeting. OPEGA has not started on the review other than gathering information and figuring out how to proceed.

Sen. Craven said her preference would be to look at the DHHS Licensing and Regulation of Child Care Providers, as well as the DHHS Workplace Culture and Environment because those are the two topics that she continues to receive calls and emails about.

Sen. Johnson said he has received concerns regarding homes that aren't taking care of their elders. It was not quite in the scope of the DHHS Licensing and Regulation topic, but wanted to let the Committee know that was an area of concern for him. Chair Cain said because the GOC did not have a formal request related to Sen. Johnson's topic, from a process perspective, the Committee needs to make sure if it is a topic they want before them, a request should be submitted. Sen. Craven said there is an Ombudsman Program for Elder Care and there is an oversight committee with the responsibility of following up on elder care licensing. Sen. Johnson said that route has apparently been followed a number of times without satisfaction and is why he was bringing it before the Committee.

Chair Cain also thought the DHHS Workplace Culture and Environment topic has been bubbling up over many years and would like to see a draft RFP. She would like to know how the GOC would assess it from a quantitative and qualitative perspective and what that would involve. The RFP has to be carefully written to understand how they are going to arrive at assessing the topic question. Director Ashcroft felt it was an appropriate place for a consultant and there are a number of methodologies that might be used to assess the culture and the issues. In putting out an RFP, OPEGA would be trying to express what kinds of issues have been raised and asking a consultant for their proposal of how an assessment would be done and the cost of it.

Sen. Burns asked Director Ashcroft if she meant that they would have to hire a consultant to direct them in the right direction. Director Ashcroft said she would be looking to a consultant to actually perform the work as well. She understands the value of having someone completely outside the organization undertake the actual work in a situation like this and that folks might feel more comfortable speaking with. Also someone who has expertise in identifying what the issues are and the root causes of them.

Sen. Katz asked for a brief summary about what the review would entail and what questions the GOC was seeking to answer. He said DHHS is such a huge Department with so many different divisions and geographic locations around the State he was not sure exactly what the GOC would be looking at. Director Ashcroft said the topic was first brought to the Committee because of complaints and concerns being heard about management's behavior and treatment of employees in the workplace and overall whether that workplace culture was conducive to retaining and engaging capable, knowledgeable and motivated employees in that whole context. Sen. Katz said with the thousands of Department employees and the hundreds of Department managers that sounds like a huge undertaking as opposed to looking at a problem in a division in Augusta or a division in Bangor. He did not know how you would go about assessing a Department that has dozens of offices around the State without spending a huge amount of money. He was not against the inquiry, but just did know how to do it in a focused way that would give the Committee a result at a reasonable cost.

Sen. Cain said she had a similar concern and is why she is interested in seeing an RFP. That would give the Committee a sense of what they are looking for. She understood what Sen. Katz was saying about it being a big undertaking which makes it more essential to do, and done right. She does not want to see the GOC go down a path and then not actually get a good assessment because the scope was too broad.

Sen. Craven said almost exclusively the complaints, letters, and emails she has received were from employees at the CDC, so for her that would be the ideal agency to start with. She said if it was only one or two people she would say they were probably just not happy, but it is consistent and the complaints are so much alike.

Sen. Katz said Sen. Craven reminded him why the topic was on the Work Plan, but the Maine CDC is a small portion of DHHS and if that is where the concern is then that is where they should focus rather than the entire Department. Sen. Craven said that there were very similar complaints received regarding DHHS Licensing.

Sen. Johnson said he's received comments from other DHHS agencies as well and thinks the GOC is looking for a consultant who has experience knows what questions to ask confidentially of employees.

Sen. Burns agreed with all three of the previous Senators and said he receives complaints from State employees expressing that they do not feel that the policies set up at the top are the ones being implemented and when they go to talk about that, there is a very strong feeling that they best not complain. He said along with what Sen. Katz said he does not know how you would get your arms around that unless it's a professional trying to flush out if there is something there, or if it is the front line staff and top management bickering.

Chair Cain asked if there was an initial survey that could gauge whether it needs to be a full scope. She said the Committee needed to know more about what the review would look like and asked if Director Ashcroft had any advice for the Committee.

Director Ashcroft said it is a big Department, but there are organizations that will go in and do culture studies for an entire company, so she does not think it is necessarily an unreasonable scope depending on who the consultant is. You would use a standard survey tool which would to be set up to be done in a very confidential fashion to get an initial assessment of where and what the issues might be. She has seen some tools that are used standardly and OPEGA would be looking for a consultant to line out the one that would be most appropriate to use here. Once that is done, if it does show areas that seem to warrant a closer look then there are other methodologies for a next step in the review.

Chair Cain said the GOC was looking to identify priorities for the topics on OPEGA's Work Plan under "Planned". Director Ashcroft said the Committee also needed to decide whether they wanted to make the topics such a priority that OPEGA should delay or postpone work on anything currently have in process. She would not advocate for that and said OPEGA would not get started on the next review, other than getting the RFP together on the DHHS Workplace Culture and Environment, for about another month or so.

Rep. Boland said the GOC still had work to do on OPEGA's PUC Report and asked if that was still open. Director Ashcroft said the Committee still has not finished its work on PUC and her request for additional work is one of several requests the GOC has pending and have not made any final decisions on. That is work still for the GOC, but is not on OPEGA's Work Plan because the Committee has not made a final decision of what to do with it yet.

Sen. Cain noted several topics that the Committee still needs to work on which includes the PUC, the Unemployment issue, Legislative Non-Partisan Staff and Charter Schools. She said the Committee might want to take a fresh look at all of those topics at its next meeting.

Chair Cain referred to the DHHS Audit Functions topics and said there is a lot of work being done on it. The Health and Human Services Committee has been dealing with a lot of questions around fraud, waste and abuse in programs and wondered if the GOC wanted to ask Director Ashcroft to touch base with the Committee to see if that topic would still make sense for the GOC to review. Sen. Craven said the HHS Committee passed a bill that would require the Department to report back on all of the functioning by October and said for that reason she would not feel so anxious about DHHS Audit Functions as she does about the Licensing of Child Care Providers.

Chair Cain asked if the Health Care In Corrections System was what would be discussed later in the meeting. Director Ashcroft said she was going to give the Committee the status on it, but the actual work to get the cases and work through what has gone on in them is a review in and of itself. She said that is one she would also like to get done because it is a piece of follow-up.

Chair Cain said she was looking for guidance from the Committee around next step. She noted that there has been the most interest shown by members for the DHHS Licensing and Regulation of Child Care Providers and the DHHS Workplace Culture and Environment.

Director Ashcroft asked if the Committee would be okay with OPEGA not starting full bore on the Child Care Provider Review until the MEIF Review winds down. Committee members agreed that OPEGA's top priority would be to complete the MEIF Review.

Chair Cain asked the Director if the Committee had to take a formal vote. Director Ashcroft said no because the topics were already on OPEGA's Work Plan.

UNFINISHED BUSINESS

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

-Consideration of Information Gathered Through GOC Inquiry

Director Ashcroft said there has been an audio file created of the March 14, 2014 inquiry and she anticipated posting it to the GOC/OPEGA website in conjunction with the Meeting Summary from that meeting. Etta is preparing a full consecutive transcript in the style that the GOC received from the professional transcriber when the Committee subpoenaed individuals in the Maine Turnpike Authority Review. It is not a verbatim transcript, but it is the same style that we got before. The Transcript is currently in proofing stage. The witnesses and the counsel for those witnesses have been advised that we are in the process of creating the transcript and will notify them when it is available.

Director Ashcroft reminded the GOC that, as part of an action the GOC was thinking about taking, the Attorney General had proposed, the AG's proposal creating some sort of staff level working group to improve, clarify or expand on records retention policies across the State so when the GOC is ready to talk about actions again, OPEGA will be recycling that. They were going to send OPEGA a letter, but it might make more sense now that the Committee may have some other specific things based on what they heard at their last meeting, to send a letter to the AG outlining what the Committee would like to see addressed in that effort.

She said OPEGA has been reviewing the testimony that was taken at the March 14th meeting and has been comparing that testimony with the interviews OPEGA had done previously, as well as with documents. OPEGA is doing that review for four purposes toward giving information to GOC.

1. To identify any significant inconsistencies between each witnesses' testimony and what they told OPEGA in their interviews.
2. Identifying any significant inconsistencies between witnesses in their testimony or between them and the documentation that OPEGA has.
3. Identifying any inconsistencies between documentation and witnesses.
4. Identifying any new information that was received through the testimony that OPEGA did not have either in the same amount of detail or had not heard at all before.

OPEGA is preparing a document for the Committee that would summarize that information.

Director Ashcroft said OPEGA would like to take all that information and perform addition analysis to determine whether they can line out more specifically than they were able to do at the time of the Report, what transpired and why, the root causes or the main motivation as that is part of what the GOC was after. Looking at what issues still exist or have emerged and what their root causes might be. And also to see if we can resolve any of the significant inconsistencies with information OPEGA already has or which we may be able to get by asking additional clarifying questions of the individuals involved.

Sen. Burns said he could make his own analysis and is not ready to ask for any additional information until he has had an opportunity to make his own comparison and analysis.

Sen. Katz agreed with Sen. Burns. He suggested that the GOC not hear the conclusions at this meeting, because it sounds like the Committee will be hearing more. He said he was not as interested in what OPEGA staff concludes from all this, as what the GOC members conclude from all of this.

Director Ashcroft said OPEGA does not have any conclusions yet. She was just going to let the Committee know they received new information, have more detail and do have some inconsistencies showing up in the various arenas.

Chair Kruger did not want the Committee to get into the position that they were getting ready to wrap the review up, because since the Committee meeting two weeks ago he has heard from a number of people who work at DHHS, and specifically CDC, but not exclusively CDC. He also found himself alarmed by the information that the Blackberry was distributed by the Department to senior staff with what sounds like the express purpose of avoiding scrutiny of the Freedom of Access Act and that is very distressing and concerning to him. He wanted to make sure that was included in what OPEGA is looking at.

Director Ashcroft said since that was a new piece of information, she had a conversation with Brenda Kielty, Ombudsman, Attorney General's Office, about what that might be about and how she saw that. She also talked with the Office of Information Technology about the ability to retrieve information and asked if that was

correct or not. Director Ashcroft found out that the Governor's Office, in conjunction with OIT, was already in discussions having heard that same information. Jonathan Nass, Sr. Policy Advisor, Governor's Office, talked with her about it and shared an updated policy they had just done regarding that matter. The updated policy was distributed to the GOC members. Sen. Cain referred to the information provided by Mr. Nass and said the date of the Policy says effective 6/1/12. Director Ashcroft said the policy was already in effect before, but they have recently updated it. Sen. Cain said the last provision was 6/1/12 and asked if there was a more recent updated policy. Director Ashcroft said they probably should have changed the revision date. She will get clarification on the date from the Governor's Office. She said the part that has been added is under Section 4.13 of the Policy. There is a lot of difficulty in trying to figure out all the different ways people might communicate with others that would not necessarily be documented and retrievable in the fashion that one might like, so their stance is to implement a policy that says all official State business conducted electronically must be sent through the State's email system to allow for retention in the State's Archives and is not to be conducted through any other electronic means, including, but not limited to unofficial emails, text messaging and instant messaging. They have taken a step in putting a Policy forward and Peter Steele, the Communications Director for the Governor's Office, has met with all of the public information communication officers across the agencies to make them aware of the Policy and to prescribe that they need to make all the employees in their agencies aware of it as well. They wanted to relay the message that they were also concerned about the information that came up in the inquiry regarding Blackberries and have taken it seriously.

Sen. Burns asked what was going to be done about phone calls. Sen. Cain said that is part of the challenge.

Sen. Cain said she was glad that OPEGA staff was doing the analysis since Committee members did not have the benefit of participating in the initial interviews during the course of the review and it makes sense for the GOC to try to resolve the inconsistencies.

Director Ashcroft wanted to clarify what the GOC would like to see come from OPEGA initially. She said what that looks like now is bullet points where there are inconsistencies in one way or another and also on the new information from the Committee's last meeting that was not known before. It is not a replay of everything that was heard in interviews versus heard in testimony. OPEGA is pointing out where they think there are issues that still don't make sense. She asked if that was what the Committee was looking for. Chair Cain said the Director was talking about just the facts of what OPEGA heard before and what was heard the second time not necessarily a judgment, just where are the inconsistencies. Director Ashcroft said that was correct.

Sen. Johnson said the issue is beyond the question of phone calls raised by the updated communication policy. It says that all official State business conducted electronically must be sent through the State's email system. Not only are phone calls electronic, which means you are not allowed to phone anyone now, but so is EDI. EDI is an electronic document interchange between computer systems and is a way of conducting transactions via electronic communication between computer systems so it might be used as part of your procurement process. The policy is saying you are not allowed to use services you have contracted for and which you have undoubtedly designed some proper means of archiving what is being exchanged for communications and transactions. You now have to drop that and use email. Sen. Johnson thinks the Policy is creating problems and should be rewritten and wanted that to be on people's radar. Chair Cain said that information may want to be feedback to the Executive Branch. Director Ashcroft noted that she did not think the Policy itself means to encompass financial transactions of the State. It is about public communications. Chair Cain noted that at the top of the Policy is says it pertains to contact with the public and media, but understands what Sen. Johnson is saying. Sen. Johnson said if that is what the scope is then it does not get to the problem that has been raised, because you are talking about communications between employees so if the scope of the Policy is not about all communications in conducting the State's business then it is not getting to the core problem and needs to be written better to avoid creating unnecessary problems. Director Ashcroft will pass the information raised by Sen. Johnson to the Governor's Office.

Sen. Katz referred back to Director Ashcroft asking OPEGA what work the Committee wanted them to be doing at this point. He said in order to ask that question the Committee needs to decide where they are heading. Are they talking about issuing a Committee Report that will reflect a consensus view of exactly what

happened. He does not think the GOC has decided to do that and he does not think it is a worthwhile use of the Committee's time. If not, where does the Committee go from here with the whole issue. He is not saying that they decide today exactly what steps the GOC takes, but what is the rest of the process going to look like with respect to the CDC investigation. He did not think they were going to be issuing a Committee report saying we the jury find that this is what happened because if they are going to do that, it will take forever.

Chair Cain thinks the GOC is looking for a couple of things. (1) Trying to get a better handle on what happened in relation to the investigation the GOC had originally around the formula and change. She thinks the Committee did get additional information at the last meeting. (2) What are the implications of this across State government, not just in CDC and DHHS when it comes to record retention, how information is treated when big decisions are made and also the resources available to support that. That is the ultimate take away and the GOC is not deciding whatever is happening with the legal front outside State government, but the Committee does have an obligation to sort out what it means for State government. One of the reasons they wanted to have the individuals come to a meeting was to figure out whether it was a one-time bad decisions made along the way or is it something also borne from a broader problem in the process or policy and how is that addressed so to minimize the likelihood of it happening again. She is not talking about an over correction, or no longer being able to talk on the phone or do things quickly, but is talking about trying to make sure that the Committee looks for the structural changes that might need to be made to prevent this from happening in other places.

Sen. Katz agrees with Chair Cain but raised a couple of issues. Were there orders to destroy documents? There is conflicting evidence on that. He does not know if they are looking as a Committee to reach a conclusion on that issue. Was the motivation for the destruction of documents to cover up the change in the scoring mechanism? That is another thing that there is dispute about. Exactly what was the motivation for changing the score and there is conflicting evidence about that. He has drawn his own conclusions about that, but his conclusions will not be identical to other Committee members' conclusion. Are they going to try to resolve those issues as a Committee to answer those questions. His inclination is the answer should be no because they will never get there collectively, and the Committee needs to decide that set of questions sooner rather than later.

Sen. Burns asked if Section 4.13 was the only change in the Policy discussed earlier. Director Ashcroft thought that is what she took away from her conversation with Mr. Nass, but did not get into a detailed discussion of the document. If there are more changes he would like to know.

Rep. Boland said one of the comments that stuck with her from the testimony of individuals at the last GOC meeting was the remark from Director Wigand when she responded to Andy Finch's remarks saying this is what happened and her comment was well do what you think, we all have our own compass. She was bothered by that because it seems there should be a Department compass for treating issues when they come up that might be very egregious. The idea of creating a policy, a style, and philosophy of handling business within a department that somehow bypasses, or puts a flag up, or guides these kinds of controversies when they arise. She wanted to know if the Committee would be looking at that issue. Chair Cain said she thinks that is what the GOC is trying to sort out.

Sen. Johnson understands what Sen. Katz is trying to get at and the Committee will not have certainty on particular matters. He thinks there are things that they will have learned from the testimony at the last meeting and that it is worth drawing conclusions as to what more is known, what more they have questions about that were not raised by the original review. With that in mind the GOC can try to make suggestions and draw conclusions from the best information available about what likely occurred, to then make reasonable suggestions as to what path to take for remedies to prevent them from happening in the future. He thinks knowing who said what, what decisions were made, what chains of command, actions and responses were is a better way to be guiding the Committee in terms of assessing the problem communicating policies to the employees, having management responsibility and consequences for acting to ensure that employees are conducting their business in concurrence with that policy. Is the problem that some in management should have known better but dropped the ball in following through on things? He said he was appalled in hearing

that when an employee raised a concern of whether it was the right thing to do that they were told, that this is not something that led their direct supervisor to want to follow-up and bring some certainty to that person on what the right thing is to do. For him there is also a matter of how, as an administrator, a matter of concern about someone's intention is followed up on, is different entirely from the question of what are retention policies, and what is our response to FOAA requests. He thinks it is useful to at least take a look at what has been learned from the process that the GOC took the time to go through at the last meeting and be as informed as they can in trying to suggest courses of action that would ensure that departments operate as they should in the future.

Sen. Craven said the Committee needs to create a road forward so there is transparency in the process.

Chair Cain said what she has been thinking about since the last meeting is the comments about version control. She thinks about all the work that is done in legislative committees, and part of having an outcome people can understand and believe in is being able to keep track of how you got there. She wants to make sure it is consistent across State government. In this case version control really meant let's make sure none of the documents exist that show how we arrived at our conclusion. That was said right in front of the Committee at the last meeting. She said that is not presuming motivation behind that, but just the fact that that was the policy or the game plan, there was version control which is just a lot shorter way of saying let's get rid of everything that shows how we got here. Again, motivation notwithstanding, she thinks that is a problem that the GOC needs to make sure that they have the right policy, training or elements in place so that it is not assumed to be the plan across State government, in CDC or beyond.

Director Ashcroft said some of the explanations that were given for some of the reasons things were done, is what OPEGA is looking through. Chair Cain said that is one of things the GOC will take up at their next meeting and is why it is important for OPEGA to finish the analysis because the staff has the benefit of information, Committee members don't.

Rep. Boland said some businesses have to document decisions made and policy, and it is done in a way that others can access it so that if someone makes a decision everyone can see it and if someone doesn't like it they can register that concern. It would follow how the process went and she would like to know if anything similar to that is done within the Department.

Sen. Johnson said, aside from policy questions, some of what the Committee heard about is no one being the keeper or the owner of particular documents or process, and that raises questions of when beginning a process shouldn't what is being conducted for business be documented by someone. If there is not a person responsible then there should be a mechanism for a group of people to ensure that the work is committed to a document management system. There either has to be an individual responsibility or a clear shared responsibility and technology for supporting that. Chair Cain said the Committee may want to meet with the Secretary of State, and Archives to talk about how they do that work and what is available in OIT. She suggested putting those people on the GOC's list of individuals to talk with.

Chair Cain asked the Committee if there were any other requests that members would like to make beyond what Director Ashcroft had outlined and the request they just made that they would like to have at the next meeting.

Sen. Johnson said in relation to the issue of a direct supervisor following up he thinks it might be useful to know and have some guidance on what the Human Resource's policy is for how employees are supported when they bring concerns to a supervisor.

Chair Kruger would like to see a digest because they heard from different people a similar message and he would like to see a digest boiling down what are they all saying.

Rep. Boland said the GOC has not talked with the Commissioner or received a letter from her regarding the policy or lack of policy.

Sen. Johnson thought it might be valuable if whatever OPEGA staff can condense for observation from the testimony in relation to the original Report and might worth getting the Department's response to that.

Chair Cain wanted to make sure that they didn't presume that the Committee would have all the answers in two weeks. They have to have time for members to process the information.

Sen. Johnson suggested staff from CDC also be available to answer follow-up questions and for them to also have the opportunity to respond.

Rep. Cotta referred to the previous meeting and under the subpoenas issued they were asked to bring documents if they had new information and he had asked for copies of those new documents. He asked if they were included in the information the Committee received for this meeting. Director Ashcroft said OPEGA has reviewed them and did not find a lot that was new and what was new was, although have not been through it all to say for sure, is so far not of any real significance. OPEGA does have them and she was not sure they would be contextually interesting to the Committee members on their own. Rep. Cotta clarified that they were still under review. Director Ashcroft said OPEGA could make copies if he would like to receive them. He did not.

Director Ashcroft was confused about where the Committee wanted to go and in what order they wanted to get there. While she thinks they can invite all the people mentioned above to talk about the various issues, she is not sure if what the Committee wants to talk to them about is as focused as it would be yet, or would be after having the benefit of the discussion about what was heard first. She went back to the purpose that the GOC had for the inquiry and what they were hoping to learn about it. She is framing how OPEGA is looking at it in that light. A number of the issues the Committee has talked about fall into some of the categories and she is uncertain to what extent they want her to explore things that fall outside the objectives that are driving the inquiry.

Chair Cain said for her it started with what is in the Report, or what was the scope the Committee was originally looking for and has been the stated interest. If there are off shoots of those as a Committee they can decide whether they are within reason, or not, to fall under that initial purpose.

Sen. Katz said following the testimony at the last meeting Sen. Burns made a request to get the information from staff about essentially what the witnesses had told staff during their investigation to see if it was in line with what the testimony was, and he thinks that makes a lot of sense. He said once the Committee has that information, he does not know if continuing to drill down into the facts to compare this statement with that statement, etc., to bring people back in to ask them about inconsistencies, or to what end the GOC was doing that. He thinks the Committee has a sense of what happened, what shouldn't happen and what kinds of recommendations to make going forward to make sure things like that do not happen again. He was not convinced that a continued inquiry into details of what did and didn't happen is a good use of the GOC's or staff's time beyond that.

Chair Cain said she thinks it is helpful for the GOC to have the staff's perspective on that. She is not necessarily convinced either that they need to reopen the dialogues directly, and thinks that question should be left until after the Committee sees that. There may be a direct line to show here is what the policy was, and in which case, it was a really terrible decision-making and that is one set of accountability that may not be there. And the other side is there is a glaring hole in the actual policy or expectation that needs to be fixed.

Sen. Johnson said it was more a matter of understanding what exists for policies that need to be fixed. The GOC will not know the paths it will go down until they have the information before them. He would hope from what they have heard have learned, if some of those things are outside the scope of the Report then there are noted and the Committee can discuss how those might be followed up on.

Sen. Burns said he could make a list of things that should or should not be done in the future already, as he thinks other members could, and he is not sure of the value of continuing on and on. He said all the time that Rep. Davis and he worked for State government there were either laws or policies in place where anytime somebody came to you, whether it was an employee that you supervised or a civilian, and made any type of allegation, you have the obligation to take that to the top to make sure that it was vetted out. You did not have the choice of not following through. He asked if that was a State policy under the personnel rules and would hope that it is consistent for all agencies. Director Ashcroft said she really didn't know. Chair Cain said that was an excellent point and something that the GOC needs to know and is exactly the kind of thing the Committee needs to be pushing on because whether that should be the policy and/or that's just plain old common sense.

Chair Cain asked if there were any other final comments before moving on with the agenda. There were none.

-Further Consideration of Possible GOC Actions on Issues and Recommendations

Not discussed.

• Update on Status of Draft Tax Expenditure Review Process Legislation

Director Ashcroft said an amendment had been added to the Draft Tax Expenditure Review Process legislation and worked by the Taxation Committee. The previous version actually called for implementing a process for ongoing legislative review of tax expenditure programs that involved OPEGA doing evaluations and providing information to the Taxation Committee. The GOC also played a role in overseeing the work done by OPEGA, establishing a schedule and being involved in looking at and approving, in conjunction with the policy committee, what might be appropriate purposes, beneficiaries, and performance measures that were going to be used as the foundation of that evaluation.

Director Ashcroft said there were some concerns raised by stakeholder groups and members of the Taxation Committee about moving all the way forward with actually implementing that process. There were concerns about access to confidential tax data, the role of the GOC versus the other Committees. There were also concerns about the fact that the Director had said OPEGA would need at least one additional position to do that work, even though everyone has acknowledged all the way along that there would be additional resources needed. As a way to move something forward, they now have a Resolve that directs OPEGA to develop a proposal for how to implement an ongoing Legislative review process for the Legislature. There are several elements that are supposed to be talked about in the proposal. OPEGA would classify the tax expenditures as to which ones would warrant full evaluation versus an expedited evaluation. That was in the original bill. OPEGA would develop a proposed schedule for reviewing those on whatever made sense for a cycle and the evaluation parameters for any of the tax expenditures getting a full evaluation is something that we would seek to establish as part of the proposal. OPEGA would be proposing what the purpose or intent looked like for that expenditure, who were the intended beneficiaries and what performance or success measures might be appropriate for evaluating that, assuming that if we were going to do full evaluations these are the objectives we would be looking to report on. Director Ashcroft said all of that was in the initial bill, but that piece is being done in this proposal rather than stepped out as part of an ongoing review process.

Director Ashcroft said a new piece to the Resolve is OPEGA is supposed to also identify what data would be needed to conduct these reviews, what the sources of that data are and where there might be confidentiality issues around data. That is now upfront in planning as opposed to something that would have been during the review. She said OPEGA also has been asked to comment on whether there would be any benefit to having an outside group or stakeholder group available, or required, to be advisors in the role of evaluation of tax expenditures, also to give an assessment of what resources might be needed in OPEGA if the process were to get implemented, and what revisions to statute might be needed to implement that process or schedule.

OPEGA is to submit that proposal to the GOC and the Taxation Committee by March 1, 2015. The Taxation Committee would have authority to propose legislation that would actually implement an ongoing process.

Director Ashcroft said she did find resources to do this piece of the work within existing OPEGA resources by using unencumbered balances from prior years to fund a part-time temporary position through fiscal year 15 coupled with the money for a consultant to help advise OPEGA on things like data and methodology, etc. as they do their planning work.

Director Ashcroft said the bill was voted out of the Taxation Committee ought to pass with the amendment. In response to Chair Cain's question of the vote, Director Ashcroft said it was not unanimous, but she is not sure what the final vote was as other members had come in after the vote was taken.

Sen. Burns asked what the objections were that were raised. Director Ashcroft said they just voted against it and could not say why.

Chair Cain said she wishes the Committee would not have moved ahead with just the Resolve because she thinks the GOC and OPEGA are ready and that the Legislature has been talking about this for decades. There is no question that there can be more transparency, accountability and clarity in the State's tax expenditure programs around what they do for the State so they can be used better as an economic development tool.

Sen. Katz said he was on the Tax Expenditure Review Task Force and is very proud of the work they did to get to the point of where they were. It is not defensible that the State does not have a way of measuring the effectiveness of the hundreds of millions of dollars the State is spending in tax expenditures and it was a good path forward. He said at least the Legislature is moving a little bit on the issue, but agrees with Chair Cain on its pace.

Rep. Cotta said he thinks that if the Legislature gave public notice that all the tax expenditures were going to be terminated and scheduled hearings for them to come in and show just cause of why they are entitled to it, it is probably the shorter distance between two points. Chair Cain said that has been proposed before and not done, but thinks if it keeps going this way, more people are going to feel that way as well. She said others States have done that.

Chair Cain said the GOC meets year round and can always bring the issues back up, but in the meantime hopes that the Resolve moves them in the right direction.

- **Update on Status of Follow-up Review of Health Care in Corrections**

Director Ashcroft said as talked about earlier the GOC had assigned OPEGA with the formal follow-up review. OPEGA was going to take a sample of the many letters and cases that the advocacy organizations had been working on and follow those through with the Department of Corrections to see if it can be determined why those issues still remain ongoing, and what that might say about additional issues in the provision of health care to inmates that should be addressed. In addition, the Commissioner was at the meeting and based on his briefing the GOC had requested additional information. DOC has provided that information.

Director Ashcroft said OPEGA is in the process of confirming their access to medical records under HIPAA so working to make sure they do not need prisoner releases in order to look at that data. The advocacy organizations have shared with OPEGA about twenty-five cases to follow-up on. Once OPEGA gets a decision on what is needed to go forward to access medical data from Maine DOC, they will begin the next phase of the process. She is not sure OPEGA will select all twenty-five as a sample size to start with, but will select some sample of those cases to review. Chair Cain said referring to the sample size that at the meeting the advocacy groups were talking about more than 400 complaints from more than 300 prisoners and asked if OPEGA had confidence or any assurance those are the right cases to be looking at. Director Ashcroft said OPEGA has tried to line out who are they and the next piece is to see how does that sample look in relation to the category of issues that MPAC laid out in their letter. She would hope to be able to choose a sample from that group that has an overlay of the more significant kinds of issues.

Director Ashcroft did not want to commit to doing all twenty-five or more because she is not sure how time intensive it is going to be to get through one of them. It also has opened up the flood gates of letters OPEGA is receiving and will continue to receive as long as the topic is on OPEGA's Work Plan.

Sen. Burns and Sen. Katz noted from the follow-up information provided that 0.03% of the medications not being available is a very low number compared to the number of medications given to patients.

Chair Cain asked if the Director was looking for additional guidance from the Committee or was she just providing them with the updated information. Director Ashcroft said she was just providing an up-date.

Chair Kruger asked if the information had been shared with the advocacy groups. Director Ashcroft said no, OPEGA just completed it yesterday. She will make sure they receive a copy of the information that has been provided to the Committee. Chair Cain said members can let Director Ashcroft know by email if there they have specific concerns prior to the next meeting.

REPORT FROM OPEGA DIRECTOR

Director Ashcroft said OPEGA is still in the process of recruiting for the full time Analyst position and will be doing second interviews in the coming week. Also somebody came back into the current temporary part-time Analyst position for FY14 and that is the one that would get extended through FY15 if the tax expenditure legislation goes through.

NEXT GOC MEETING DATE

Chair Cain said the next meeting would be April 11, 2014 and suggested that they try to reserve the Council Chamber for that meeting in anticipation that the House and Senate will probably be meeting. Committee members agreed that the 1:00 p.m. start time would work better if there was going to be sessions that day.

ADJOURNMENT

Chair Cain adjourned the Committee meeting at 3:54 p.m.