



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**  
**April 10, 2012**  
**Accepted May 25, 2012**

**CALL TO ORDER**

The Chair, Senator Katz, called the Government Oversight Committee to order at 1:08 p.m. in the State House.

**ATTENDANCE**

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

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

Legislature: Sen. Thomas Saviello

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA  
Wendy Cherubini, Senior Analyst, OPEGA  
Scott Farwell, Analyst, 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.

**SUMMARY OF THE MARCH 9, 2012 GOC MEETING**

The Meeting Summary of March 9, 2012 was accepted as written.

**NEW BUSINESS**

- **Consideration of Request for OPEGA Review of Certain Matters Pertaining to the Department of Health and Human Services**

Director Ashcroft referred to Sen. Brannigan's letter to the GOC dated March 23, 2012 requesting a review of operations of the Department of Health and Human Services (DHHS). The letter included concerns about the

degree to which DHHS is adequately communicating with providers who are having issues with the MaineCare billing system in the change over to their new system. He has concerns about the apparent lack of communications within the Department to ensure that areas of concern are getting to the Commissioner's Office, and to the Legislature as well as DHHS' inability to answer questions the Legislature has had about the financial impacts of various initiatives going on within the Department.

Chairs Katz and Burns, Sen. Diamond and Rep. Pilon also proposed that OPEGA conduct a Rapid Response Review of DHHS with respect to the following issue:

Before the fall of 2010, the Department had in place an ACES computer system which recorded when those on MaineCare were no longer eligible for MaineCare. When the new MIHMS payment system went on-line in the fall of 2010 it became apparent that the ACES system could not communicate those ineligibility terminations to the new MIHMS system. The identity of individuals no longer eligible for MaineCare was not being entered into the Department's new system. Although those who became ineligible were apparently notified of that fact by letter, their MaineCare cards remained "active" and could be used to access MaineCare services at various providers. Over the course of time it appears as though approximately 19,000 people became MaineCare ineligible yet were carried on the MIHMS system as still being eligible. A certain portion of those people accessed medical services which were paid for by MaineCare.

There appears to have been a major breakdown in communication within the Department such that the existence of the issue in the fall of 2010, and the growth in magnitude thereafter, was never appropriately communicated up the chain of command so that senior Department officials were able to fully appreciate the growing problem. This dysfunction in human communication has resulted in millions of dollars having been inappropriately spent on MaineCare services for those who are not eligible. In addition, the Legislature was not made aware of the financial impacts of this computer weakness on the MaineCare budget they have recently been trying to address.

The Chairs and Leads proposed that OPEGA be tasked with investigating this problem to see how this lack of communication could have occurred within the current and previous Department administrations. The Legislature needs to understand what lessons can be learned in an effort to maintain a high level of confidence in communications between the Department and the Legislature.

Sen. McCormick and Chair Burns said there has been miscommunication, or a lack of clear communication, that has gone on for quite some time at DHHS. It appears that communications are not flowing through to the Commissioner's Office. A review has to be done of where the communication gaps are, if they still exist, and the source of those problems.

Committee members' interest in a review focused on the subject of human communication that included three specific areas:

1. The breakdown in human communication which led to the fact that as many as 19,000 people who were no longer MaineCare eligible stayed in the system as eligible and may have received services since the new MIHMS was implemented.
2. The quality of communications between DHHS and its providers and what problems may exist.
3. The quality of the communications between DHHS and MaineCare clients and whether there are improvements that could be made.

Rep. Kruger did not believe the GOC needed to get into the computer problems, but he is concerned about the human communication between the Department and the Legislature. Serious miscommunications have taken place and that is the type of problem the GOC is capable of responding to.

In response to Rep. Fossel's concern that OPEGA not be continually taken away from their current and planned work, and Rep. Kruger's concerns, Chair Burns said that if the GOC is going to ask OPEGA to do a Rapid Response Review, it is going to set other reviews the Committee has already prioritized aside so the Rapid Response Review has to have a very limited, focused and narrow scope. He also recommended that the Review not be done until the session was over.

The Committee discussed the timing of when the DHHS Rapid Response Review should begin. It was noted that the Department is currently trying to get the information together that the AFA Committee and the Legislature will need in May so the Review should not start until mid-May so as not to pull resources away from that effort. Director Ashcroft said OPEGA would be conducting interviews, looking at documents to the degree they exist that would define the lines of communication and identify where those communication weaknesses may have been. If OPEGA had access to those documents and the individuals they needed to speak with, the Review could be done in a month to a month and a half. If the Review started mid-May it would be completed by sometime in July.

Sen. Sullivan thought it important to have the information for when the Legislature returns in May. Some other members cautioned that DHHS and the Controller's Office are currently consumed on working to produce the needed information for the AFA Committee by the first of May and the full Legislature when it returns in the middle of May.

**Motion:** That the Government Oversight Committee task OPEGA with a DHHS Rapid Response Review primarily focusing on the issues of the miscommunications from 2010 forward on the 19,000 people who were MaineCare ineligible but were left on the system. The review will begin in mid-May with a completion date of sometime in July. (Motion by Chair Katz, second by Sen. Sullivan, Passed unanimous vote, 12-0).

The remaining issues regarding DHHS will be addressed at a later meeting. Director Ashcroft will include issues related to DHHS communications with providers and MaineCare clients on the next Quarterly Request for Review List.

## UNFINISHED BUSINESS

- **Request to Review Contracts and Agreements Related to the Operation and Management of the State-owned Juniper Ridge Landfill**

This request came from several legislators and before making a decision the GOC had wanted the view of the committees of jurisdiction about the need for, and possible scope of, a review. A memo was sent to the Chairs of the State and Local Government (SLG) and the Environment and Natural Resources (ENR) Committees. A response has not been received from either Committee.

Director Ashcroft referred the GOC members to the Summary of OPEGA's limited background research regarding the operation of the Juniper Ridge Landfill (JRL) and summarized that document for them. (A copy is attached to this Meeting Summary).

Sen. Sullivan asked if the expansion of the landfill currently being proposed was expanding the amount of land the landfill was on, or just the capacity of what the land could hold.

Chair Katz recognized Sen. Saviello, Senate Chair, ENR Committee.

In regard to the expansion of the JRL, Sen. Saviello said it is within the foot print that already exists. They are not buying more land.

Sen. Saviello said the Legislature was dealing with the landfill issue 10 years ago. Two other organizations besides Casella showed interest during the bid process, but decided not to pursue it. Casella paid \$23 million at that time for rights to operate the Landfill. He thinks the issue a lot of times is the definition of waste and there is often confusion about that definition. Household trash, if it comes in for energy, is not considered a waste

until it no longer can be used for its intended purpose. If it cannot be burned, then it is a waste. Material is coming from out-of-state and first goes to Lewiston to be recycled. Technically then, under the definition, the trash coming in from out-of-state is not considered waste until after it has been recycled in Maine. This makes it waste generated in Maine. That is the federal definition, which Maine adopted as its definition. If that definition is not favored, then it has to be revisited by the Legislature.

The ENR Committee has not had before it any complaints regarding the Landfill from Old Town or the local Advisory Committee. He has heard they think the State should get out of the landfill business, but has not heard any complaints about Casella not complying with the Operating Agreement or the Host Community Agreement with the Town.

Sen. Saviello anticipates a lot of time being spent in the next legislative session determining whether the State should continue to own the Landfill.

In response to Sen. Craven's questions of whether Casella was out of compliance with the regulations they are charged with, Sen. Saviello said, to his knowledge, they were not.

Chair Katz wanted to clarify his understanding of Sen. Saviello's information and opinions. The real problem is with the State's definition of waste. Casella is complying with the current definition of waste but, perhaps as a policy matter, the definition of waste may need to be changed and that would be for the Legislature to do. Sen. Saviello said that is correct.

In response to the question of whether a large portion of the waste disposed of at JRL is coming from out-of-state, Sen. Saviello said the Legislature passed a law to prevent out-of-state waste being disposed there because it is a State landfill. The definition for out-of-state waste is whether the waste is coming directly from out-of-state into the landfill, but because it comes in as a recyclable item with some going to daily cover and some for energy production, it is not a waste until it can no longer be used for those intended purposes.

Sen. Saviello said the decision was made at an executive level 6 or 7 years ago with very little public input, but owning the landfill and having an independent operation was a policy decision made by the State. In response to where complaints and issues raised regarding the Landfill could be heard, he thought issues regarding the Operating Agreement would go to the SPO and issues about license or permit violations would go to DEP.

Sen. McCormick asked whether, as the recyclables get more valuable, the separation of trash will be done out-of-state instead and a larger percent of what is brought into Maine actually does become a waste. It was Sen. Saviello's opinion that Sen. McCormick was on the right track and as the State goes to more and more single sort systems, there will be an increase in the recyclables.

The Committee thanked Sen. Saviello for the information he provided and for answering their questions.

The review request was asking OPEGA to look at:

1. Is the JRL being operated in a manner consistent with existing agreements, including the Operating Services Agreement, the Host Community Agreement, and the State of Maine's Solid Waste Hierarchy protocol?
2. Potential conflicts of interest in the oversight of the Landfill by the State Planning Office and/or Department of Environmental Protection.
3. Effectiveness of the RFP and contract selection process for JRL management contractor.
4. Effective and proper use of public funds in the operation of JRL.
5. Is all waste disposed of at JRL done so properly and in accordance with all laws, permits and agreements?

In regard to 3, Director Ashcroft said there was an RFP process, but there was a perception that Casella was the only bidder. From research done so far, OPEGA understands that Casella did submit a proposal, another party expressed interest, but then decided not to pursue it and a third submission was a group of municipalities in support of Casella's proposal.

The Director said Number 4 would require more research to better understand what the specific concerns about use of public funds were.

Director Ashcroft said if the GOC was interested in the questions of whether JRL is being operated in the manner it is supposed to be in order to be in compliance with all the various agreements, and the State's solid waste management protocol, then a more appropriate vantage point for OPEGA to look at would be the entities that are supposed to be making sure they are in compliance. Until disbanded, the SPO is responsible for making sure Casella complies with the Operating Services Agreement and DEP is responsible for making sure they comply with their permits, licenses and the environmental monitoring plan. The question more appropriate to ask may be whether those entities are doing their job and fulfilling their responsibilities in making sure that Casella is in compliance.

Rep. Kruger said there is an entity called the Landfill Advisory Committee and asked if the GOC would be open to receiving input from them regarding compliance issues and other matters. Director Ashcroft said that OPEGA could gather the input from the Advisory Committee.

The GOC will wait for the report back from Director Ashcroft regarding information she receives from the Landfill Advisory Committee before making a decision on the request for a review.

- **Discussion of Potential Changes to Clarify Language in Title 17 § 3104 Regarding State Employees being an Interested Party in State Contracts**

Not discussed.

- **Judiciary Committee's Response Regarding the Guardian *ad Litem* Review**

Not discussed.

- **Status of LD 1843 – Quasi-independent State Entities**

Not discussed

## **REPORT FROM OPEGA DIRECTOR**

- **Project Status Report**

Not discussed.

## **SCHEDULE NEXT COMMITTEE MEETING**

The GOC scheduled the following meeting dates: **May 25, 2012, June 8, 2012, June 29, 2012, and July 13, 2012.** All meetings will begin at 10:00 a.m.

## **ADJOURNMENT**

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