



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. JEFF M. MCCABE

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

May 10, 2013

Accepted June 14, 2013

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 9:05 a.m. in the Cross Office Building.

ATTENDANCE

Senators: Sen. Cain, Sen. Katz, Sen. Johnson, and Sen. Youngblood
Absent: Sen. Craven and Sen. Burns

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

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.

SUMMARY OF THE APRIL 26, 2013 GOC MEETING

The Meeting Summary was approved as written. (Motion by Rep. Davis, second by Sen. Johnson, passed unanimous vote 9-0.)

NEW BUSINESS

• **OPEGA Project Direction Recommendation Statement for Review of Healthy Maine Partnership Contracts**

Director Ashcroft summarized OPEGA's Project Direction Recommendation Statement for Review of Healthy Maine Partnership Contracts. Based on preliminary information obtained to date and also on OPEGA's understanding of the GOC's primary concerns, OPEGA recommended continuing the review with a focus on the following questions:

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- Did the Maine CDC use appropriate and consistent processes for scoring HMPs, selecting lead HMP agencies, awarding contracts and determining how funds would be allocated among the HMPs for FY 13?
- Did Maine CDC maintain adequate documentation supporting key HMP scoring, selection and funding decisions for FY 13? Were any documents related to the scoring, selection or funding decisions for the FY 13 HMP contracts disposed of or concealed?

Motion: That the Government Oversight Committee accepts OPEGA's Project Direction Recommendation Statement for Review of Healthy Maine Partnership Contracts. (Motion by Rep. Boland, second by Sen. Katz, passed unanimous vote, 12-0.)

Note: Senators Craven and Burns voted on the GOC's Motion subsequent to the meeting in accordance with Committee Rules.

UNFINISHED BUSINESS

- **Request for OPEGA Review of Matters Pertaining to Unemployment Insurance Appeals and Administrative Hearings – Follow-up to questions asked by GOC at its April 26, 2013 meeting**

Director Ashcroft said she spoke with Gary Buff, Associate Solicitor for the US Department of Labor Employment and Training Assistance Division. The Office of the Solicitor is assisting the Employment and Training Assistance Division in reviewing the questions raised in Maine that posed potential issues of conformity and compliance with the unemployment compensation laws. Their concern is for the integrity of the process which is what she believes the GOC had expressed concerns about. The federal government has had two people from the Boston Employment and Training Assistance Division in Maine reviewing complaint files. An employee from the Office of the Solicitor has also been in Maine doing two days of interviews with a broad range of individuals including the hearing examiners and various officials involved in the unemployment compensation process. The person assigned to this from the Office of the Solicitor is working on it full time until they complete the work. That work will include research, interviews, talking with the folks who reviewed the files and coming to some sense of what it is they have for results. Their final results will be issued in a formal letter to the State, probably to the Governor or the Commissioner of Labor. They are willing, and have committed, to providing OPEGA a copy of the letter that will include their results and findings when it is issued. At this time it is not known what level of detail the federal government's letter will include. Once the letter becomes a public document, Director Ashcroft believes she will then have an opportunity to get more details of what they did, or did not do, regarding particular questions that may arise as a result of their work.

Although the question the federal officials are asking is slightly different than the improper or undue influence questions raised by the GOC, the Director had the sense that they do intend to consider those factors as part of looking at whether there is integrity in the process. She said they are doing all of what she imagined OPEGA would do should the GOC task them with a review of question "a" and part of "b" in Chair Kruger's request letter.

Director Ashcroft said Mr. Buff thought it would take a few weeks to wrap up the work, and he said also to allow for the fact that sometimes it is quite a process in the federal government to get the final document out. He does not expect it to drag on for months, but could not say for certain when their final results would be out.

Director Ashcroft thinks the scope of the Governor's Blue Ribbon Commission's work appears to be still in a bit of a state of flux. The Chairs of the Commission are currently weighing in on the scope of what they are going to look at. The Governor's Office indicated to her that there will be an Executive Order coming out shortly that will lay out the scope. As described to her, the Director believes the scope will include a review of various complaints and concerns that have been raised by Maine citizens about the consistency and objectivity of the unemployment adjudication process. The Commission Chairs intend for the Commission to interview personnel involved in the unemployment system to understand their perspectives and concerns; and review some cases, the governing statutes, and regulations for clarity and consistency; and look at the impartiality of the system and whether there are

additional mechanisms needed to ensure objectivity and fair application of the process. The plan is for the Commission to have its work done no later than October, 2013 and then make recommendations to the Governor on any measures they identify should be taken to provide a fair process for all.

Director Ashcroft said the scope of what the Commission plans to do is a little bit different than the questions raised in Chair Kruger's request. However, it seems that in getting to its final goal, the Commission will be getting a good understanding of what is, or is not, going on in the process and in the systems regarding unemployment. She thinks they will touch on question "b" in Chair Kruger's review request letter and will hear about issues related to question "a".

Director Ashcroft said if OPEGA were to review this topic, the Office would first have to establish what constitutes improper or undue influence. She would be looking for some criteria, standards, and definitions to measure whether that had occurred. To answer question "a" OPEGA would be looking for something that would apply to the notion of undue influence in this particular context. OPEGA would then review documents, conduct interviews, and do research to understand whether that criteria had been met. To answer question "b" OPEGA would be looking at the system probably in the same way as both the Federal solicitor and the Commission in terms of objective and partial process. She is not sure that either will look at whether there is adequate protection in the structure for hearing examiners to not be affected by influences from outside to the degree of being unreasonable. This is something OPEGA could review after the federal government and Commission has done their work, if the GOC still has interest in that.

Sen. Johnson said what OPEGA could have brought, from the State level, is their ability to protect testimony of witnesses and subpoena evidence. That is also something the US Department of Labor brings to the review from the federal level, so his concerns are being dealt with.

Chair Kruger said, as the originator of the review request, he is satisfied if Director Ashcroft is satisfied from a process standpoint, that the request can be placed in Unfinished Business until the GOC gets the report back from the federal government and the Commission.

Rep. Boland noted that Director Ashcroft said that what is not being covered by either the federal government or the Commission is what constitutes actual improper influence and asked if there is work that they are not doing that OPEGA could be doing at this time? Director Ashcroft had hesitations regarding Rep. Boland's suggestion because it would require quite a bit of time talking with individuals who understand the law, and there is the possibility that the federal effort will touch on this in some fashion.

Sen. Katz thanked Chair Kruger for raising the issues and that all the members of the GOC had an interest in making sure that any quasi-judicial officer in Maine is operating in an environment free of any undue influence from anyone on how to decide a particular case or how to approach cases in general. He is comfortable stepping back from the issue at this time because he thinks the Department of Labor has the same interest, has resources comparable to OPEGA's to interview people and to bring expertise to the discussion. Sen. Katz would like to wait until the federal government and Commission have completed their reviews and if the GOC is not satisfied at that time, revisit the review request. Senators Johnson and Youngblood agreed.

Chair Cain said they were dealing with top level elected officials so they have to be careful about power dynamics for themselves as elected officials at all times in their conduct, and expect the same from all elected officials at the highest level. That is why this topic has brought so much attention, because, as stated by Sen. Katz at the last GOC meeting, they have to have faith and trust that the hearing process is one that is fair. She is also comfortable in the direction the GOC is going with leaving the review request under "Unfinished Business" with the intention of returning to it if something new is heard or when the Federal solicitor's report is received. Chair Cain also felt it was important to stress that the Committee will revisit the request when information has been received to make sure that the concerns that had been raised in Chair Kruger's request, as well as other GOC members' concerns, are addressed to their satisfaction. She said because the GOC meets during the interim, they will have the opportunity to receive the reports and to revisit the review request.

Chair Cain thanked Committee members for their input on this review request. It was a tough conversation for them and they worked through it very thoroughly and fairly and came to a reasonable place. She said that was a testament to the GOC's ability to work together.

Sen. Katz commended both Chairs for the way the issue had been handled, noting that it was an issue that could have gone down a different path, and through their leadership that did not happen. Other members of the Committee agreed.

No Committee action was needed.

Chair Cain asked if there was objection to taking items out of order. Hearing none she moved to **OPEGA's Proposed Budget for FY 14-15.**

- **OPEGA's Proposed Budget for FY 14-15 – Revised Budget Information**

Director Ashcroft summarized OPEGA's proposed budget for FY 14-15. It included the additional information the GOC had requested at its April 26, 2013 meeting regarding where the funds for a proposed budget initiative for an additional part-time Analyst position would come from.

Sen. Youngblood asked if what Director Ashcroft was now asking for in additional funds was what she had given up or had taken from OPEGA's budget in previous years. She said it was less than what had been taken from OPEGA's budget in previous years.

The Committee had no changes to the draft letter that will be forwarded to the Legislative Council in support of OPEGA's request for an additional part-time Analyst position and the related funds.

- **GOC Consideration of Open Recommendations From OPEGA Prior Reports On:**

- **Children's Mental Health**
- **State Boards, Committees, Commissions and Councils**
- **State Administrative Staffing**

Director Ashcroft said a formal process was proposed at a prior GOC meeting for closing out OPEGA's active follow-up. Reports that were more than 2 years old, OPEGA would automatically stop doing active follow-up on. The above Reports are that old so follow-up will stop, but she wanted to bring them back before the Committee one more time to decide whether they wanted to take any action.

Director Ashcroft thought Sen. Craven was interested in talking further about **Children's Mental Health**. She did not think **State Boards, Committees, Commission and Councils** had gotten a lot of traction. In 2008 OPEGA had identified possible fiscal opportunities, which was the reason OPEGA did the review. If the GOC wanted to consider anything further, it would be for OPEGA's broader recommendations in the Report for determining whether the list for Boards and Commissions that are in Title 5 were still comprehensive and whether there was any value in implementing sunrise and sunset processes for all the boards and commissions in Chapter 5. Regarding **State Administrative Staffing**, Director Ashcroft thinks the current Administration has done a lot of work with workforce development. OPEGA's Report Recommendations were that if the Legislature wanted to have a better view of the management to staff ratio, etc. then processes needed to be put in place that would allow the Legislature to see the changes in staffing and where those changes were occurring over time. Chair Cain noted that the Appropriations and Financial Affairs Committee for the zero-based budgeting initiative had required all departments and quasi-independent agencies to bring forward, with their budget testimony, a completed organizational chart. The AFA Committee has copies of those charts and has been reviewing them and recommended that Director Ashcroft get copies of the organizational charts from OFPR.

Children’s Mental Health Report will be added to a future agenda for discussion. The GOC agreed that no further follow-up work will be done regarding **State Boards, Committees, Commissions and Councils** and **State Administrative Staffing Reports**.

- **Continued Consideration of Education Committee Request for OPEGA Review of Maine Charter School Commission**

Not discussed.

REPORT FROM OPEGA DIRECTOR

- **Status of Projects In Progress**

Director Ashcroft said OPEGA is trying to get the Reports out on the work in progress so they can start working on the topics the Committee added to OPEGA’s Work Plan at its last meeting.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for Friday, May 24, 2013 at 9:00 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 9:54 a.m.