



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
July 19, 2012
Accepted August 14, 2012**

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 10:05 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Craven, and Sen. Diamond Joining the meeting in progress: Sen. Sullivan Absent: Sen. Mason and Sen. McCormick
Representatives:	Rep. Pilon, Rep. Boland, Rep. Fitzpatrick, Rep. Fossel, and Rep. Kruger Absent: Rep. Burns
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Wendy Cherubini, Senior Analyst, OPEGA Scott Farwell, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Stephen L. Bowen, Commissioner, Department of Education

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

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SUMMARY OF THE JUNE 29, 2012 GOC MEETING

The Meeting Summary of June 29, 2012 was accepted as written.

Chair Katz asked if there was objection to taking the Request to Review Contracts and Agreements Related to the Operation and Management of the State-owned Juniper Ridge Landfill out of order. Director Ashcroft noted that some interested parties to the Request were currently attending a Board of Environment Protection hearing on the matter. Following Committee discussing it was agreed to not move this item out of order, but Chair Katz noted that if the meeting goes into the afternoon he will request that the Request for Review be moved to the next meeting because some GOC members were leaving to attend a funeral in the afternoon.

NEW BUSINESS

- **Presentation of Final Report on Child Development Services**

Chair Katz asked Director Ashcroft to present OPEGA's Report on Child Development Services.

Director Ashcroft thanked the Maine Department of Education's (MDOE) management team and the management team of the Child Development Services' organization for their cooperation, time and effort. She also thanked the other Legislative Nonpartisan Offices who assisted OPEGA with gathering and providing information.

GOC members had the following questions and comments:

Sen. Sullivan asked about the federal funds Maine receives from the Individuals with Disabilities Education Act (IDEA) for child development services. Director Ashcroft explained that under the law there are two separate sets of services that are addressed in the law. One is Part B Services which are special education and related services for children ages 3 – 20. Child Development Services (CDS) implements part of that law for children ages 3 – 5 with the rest being the responsibility of the public school system. The second is Part C Services which are early childhood intervention services for children ages birth – 2 who have developmental delays. There are separate funding lines for those two types of services. The State receives both and, therefore, is obligated to follow all the requirements for both Parts in the law. The State could separate Part B and C Services.

In response to Sen. Craven's question of whether there is an advisory board that directs the State Intermediate Educational Unit (SIEU), Director Ashcroft said there is a State Level Advisory Committee made up of the site directors from the regional sites, and representatives from the SIEU. This is only an advisory board, there is not an independent governing board.

Sen. Craven also asked why some providers and regional sites were able to negotiate rates that were different than the MaineCare reimbursement rates. Director Ashcroft said not all services can be billed to MaineCare and although CDS has tried to contain costs and make standardization across the state by moving to MaineCare rates, payment is not necessarily tied to MaineCare.

Chair Katz noted that a team develops the service plan for each child, and asked if there was anybody on the team who has the job of looking out for the cost part of the equation. Director Ashcroft said there is a CDS representative, usually the child's case manager, and there are designated people who are authorized to commit funds to the plan. It was OPEGA's observation there was insufficient emphasis on thinking about, not only how to achieve the child's desired outcome, but whether desired outcome was reasonable or what is really needed for a level of service to get to that outcome.

OPEGA did not look at any individual children's plans, but we understand that there is a range of service levels that can be appropriate under IDEA. Some site directors expressed that plans they inherited when some regional sites were consolidated, had a level of service that was more than what they thought might be needed. OPEGA was also told that service plans for children in CDS Part B were higher than what the child received when they went to public school, which begs the question of whether there were more services provided under the CDS Program than was necessary.

Chair Katz said there appears to be a culture within CDS that their costs could not be controlled because their job for each child was to provide what the law required. He asked if OPEGA saw any efforts from the Central Office to the regional sites asking that they make efforts to work, consistent with the requirements of the federal law, within the budget appropriated. Director Ashcroft said no. The sites work to control their administrative costs and case management costs have stayed flat, but when it comes to direct service, the site directors will tell you that when they are told what the allocation is going to be, they already know it is not going to be enough. In some respects, the budget developed to match the allocation is not meaningful to them and CDS has been regularly coming back to the Legislature for more money. As there has been success in obtaining those additional appropriations, you can see how folks lose the concern of whether there will be enough money to fund the Program.

Sen. Diamond recalled from 4 years ago the frustration and complexities of reviewing CDS's budget. As noted in the Report, there is a lack of strong accountability and asked if there was any one person, not within CDS, but within the MDOE, or elsewhere, that supervised the CDS Program. Director Ashcroft said yes, MDOE was responsible for that but that the supervision and oversight, while described as frequent, was informal. For example, OPEGA asked for SIEU's budget but could not get one. MDOE may have felt they had a sense of what was going on with the CDS program, but it was never memorialized formally.

Sen. Sullivan asked if Autism came up during OPEGA's review. Director Ashcroft said there are global factors that will drive increases in CDS direct service costs, increases in Autism included. However, OPEGA is not talking about reducing costs by cutting services, but rather the obligation for CDS to be responsible of resources in delivering the appropriate services.

Sen. Craven asked if the CDS expenses in the Report were the total cost including the MaineCare payments as well as MDOE's. Director Ashcroft said no. Providers bill MaineCare directly for services that are required by the CDS program. The costs in the Report do not include that.

Chair Katz thought CDS was costing the State \$35 million dollars. He wanted to clarify what Director Ashcroft said regarding additional costs to the General Fund are above and beyond because providers are billing MaineCare directly and that number is not included in the \$35 million. If so, did OPEGA have the amount that has been paid beyond that under MaineCare. Director Ashcroft said OPEGA did not have that information and MDOE has not had a view of that information for a very long time. That is an issue observed and is discussed in Recommendation 8 of the Report. There has been a lack of coordination between DHHS and MDOE that they are now working to try to rectify, but they have not had good data about what the additional expenses are.

Chair Katz asked who was vetting a provider's decision that a child sent to that provider for CDS Program services needs additional medically necessary services above and beyond that would be billed directly to MaineCare. Director Ashcroft said that would fall to the MaineCare program, and MaineCare should have the mechanisms in place to make sure that what is getting billed to MaineCare is appropriate. In response to the Chair's question of whether MaineCare is aware of what other services are already being provided pursuant to CDS when MaineCare reviews whether the services are necessary for that particular child, Director Ashcroft said no. Sen. Craven noted that for medically necessary services they need a doctor's order to receive some of the services.

Sen. Diamond asked what the salaries are for the top positions in the administrative level. Director Ashcroft will get that information for him.

Chair Katz noted the time and the GOC had a ways to go with OPEGA's Report presentation. Pursuant to what the GOC has discussed earlier, they would not get to the discussion of the Juniper Ridge Landfill matter. He thanked those in attendance that were waiting for that agenda item and said it will be on the August 14th meeting agenda.

Director Ashcroft continued with the Report presentation.

Rep. Fitzpatrick asked how the federal IDEA money was received by the State and if there was federal auditing or tracking. Director Ashcroft said the MDOE administers the money with the CDS program being a budget line within MDOE's budget. The Legislature appropriates the money as part of MDOE's appropriation process. The federal funding comes in to MDOE, as does the State's General Fund appropriation, MDOE transfers funding to the SIEU, and the SIEU allocates it out to the regional sites. The CDS program has a required independent federal single audit each year.

Chair Katz asked what CDS' philosophy was in determining whether CDS hired their own folks or used resources in the community. Director Ashcroft said those decisions have been made at the regional site level. Providers negotiate and establish contracts, with the regional sites and regional site directors are authorized to contract with a provider, or not, as they see fit. It has been the purview of the site directors and the regional boards to determine how they want to deliver services in their area.

Chair Katz asked what MDOE's philosophy on the matter of whether to use in-house resources or private providers in the community. Director Ashcroft said OPEGA's recommendation to MDOE in regard to those decisions is they be made with at least a partial consideration of the cost associated with the delivery option. OPEGA was going to look at what the cost differentials were in the two models, but MDOE does not currently have data available that would allow a meaningful, complete analysis.

In regard to the CDS budget process, Sen. Diamond hoped something could be done through statute to establish a process so the Appropriations and Financial Affairs Committee can review their budget and be in a position to ask questions and make decisions more clearly. He is hoping for information that is more open and transparent.

Chair Katz asked if the Legislature needed to be taking a wider look at how services are being provided for 0 – 5 year old children. Director Ashcroft commented that as a result of this review, and previous OPEGA reviews, it would be reasonable to have questions about where all services for this population are coming from, and whether they need to be more coordinated or separate, etc.

Rep. Kruger thanked OPEGA, staff at MDOE and CDS for their work on the review of Child Development Services.

Chair Katz referred to the comments by Director Ashcroft of the unique way Maine handles the services with the separate body politic nested in the MDOE and asked if she knew how other states handled it. She said that some other states have the delivery of their Part C services for infants and toddlers handled by the DHHS. What OPEGA saw as atypical about the CDS structure was in relation to other Maine governmental entities. Any of the other organizations OPEGA has looked at that were set up as a body corporate and politic in statute and meant to be independent, have their own governing boards, and are operating a government function that does not rely on general fund and federal fund support. Most have their own revenue streams. What OPEGA found odd was that CDS, as a program and entity, is dependent on so much General Fund, and is a federally mandated program that the State itself has much responsibility for in making sure it is federally compliant. It seemed odd that it would be in this structure with MDOE, who is responsible, having little control over how the program is being implemented, and the fact that the detailed financial information cannot be seen for a program that is spending \$30 million of General Fund money a year.

Sen. Sullivan asked if the GOC could hear from MDOE regarding the Report on Child Development Services. Chair Katz recognized Commissioner Bowen.

Commissioner Bowen said his team has been spending a tremendous amount of time working on the review. When he was appointed as Commissioner to the Department of Education he knew CDS was going to be on his to do list because of his experiences on the AFA Committee. He knew they did not have data, did not know how much money was being spent, what the revenues were, what the expenditures were, etc. To his knowledge nobody designed the system based on a model that was architecturally thoughtful, well reasoned or researched. The program has evolved for years. The Commissioner said they did not learn a whole lot from OPEGA's Report on Child Development Services that they did not know. They knew there were structural problems, budget problems, operational problems, problems with the contractors versus the CDS direct hire staff and there was not a system in place for making decisions on what services a child would receive and from whom. CDS is tied in with other systems and he would like to be able to report MDOE has taken the time to look at all of the systems, but because of the work they have been doing during OPEGA's review, they have not had the opportunity to look at the universe of early childhood and how it could be better addressed. That needs to happen, but his current priority is continuing to work, in part informed by the Report, and in part informed by what they discovered in the time he has been Commissioner, to right the ship. He thinks MDOE and the CDS program have made progress regarding its budget and organizational structure, but there is more to do. He thinks most of the work remaining is to build standard operating procedures that function across the entire enterprise. MDOE's efforts have been an evolving system from a regional site based where the regional sites were independent contractors on their own, by trying to bring standardization across that system.

Commissioner Bowen thinks the review process was a good experience, the Report provides good direction for MDOE and he assured the GOC that they are moving things forward. MDOE can delve into all of the action steps and give a status report of where they are and where they think they will be in six months at the next GOC meeting.

Sen. Craven said, as a legislator, a frustration to her is the non-coordination between DHHS and MDOE and asked what Commissioner Bowen was doing to make sure that both Departments are working together. Commissioner Bowen said MDOE and DHHS have been working together on a number of important initiatives, but CDS has occupied the bulk of their time. They have had an interagency work group on early childhood that meets regularly with the idea of starting to think about how they put the pieces together because there are related programs, such as Head Start, that currently live at DHHS. Would it make sense to transfer the Head Start Program to MDOE? It is those kinds of programs that live in between the two agencies. So the question is do you move one concretely from one agency to the other, do you create an ongoing interagency structure under which a certain set of programs lives, or there is a jurisdictional piece where the two agencies have some kind of co-location? Commissioner Bowen said they do as much interagency work as they can because it is clear that people need to have a State government that is seamless from the view of the consumer.

The Committee thanked Commissioner Bowen for his comments.

The public comment period and work session on OPEGA's Child Development Services Report will be on the August 14, 2012 GOC meeting agenda.

Chair Katz asked if there was objection to taking an item out of order. Hearing none he moved to Report From OPEGA Director, 2012 NLPES Certificate of Impact Award to OPEGA for the Maine Turnpike Authority Report.

REPORT FROM OPEGA DIRECTOR

- **2012 NLPES Certificate of Impact Award to OPEGA for the Maine Turnpike Authority Report.**

Chair Katz said the National Legislative Program Evaluation Society (NLPES) has selected OPEGA as a winner of a 2012 NLPES Certificate of Impact award based on the Maine Turnpike Authority Report. The award recognized the Office for its demonstration of significant impact on state government. He thinks that all involved in the review of the Maine Turnpike Authority had great pride in what their involvement was as a Committee, and the report certainly did have an impact on what goes on in state government. Director Ashcroft said OPEGA would not have had as much of an impact without the members of the GOC and appreciates their support.

- **Request for OPEGA Review of the GOMAINE Commuter Connections Program**

Rep. Pilon referred to the material in the Committee members' notebooks regarding his request for an OPEGA review of the GOMAINE Commuter Connections Program. He believes the money paid into the Program has to be accounted for and the money should not be re-appropriated to roads and bridges. His request is that OPEGA review the GOMAINE Commuter Connections Program to find out what the history has been, get accountability on the income that has been generated over the 10 year period, find out what role the Maine Turnpike Authority, MaineDOT and the Greater Portland Council of Government has played and where the quarter of a million dollars of State employee money is. Acting Chair Fossel clarified that Rep. Pilon's request for a review was not to try to save the Program, but to account fiscally for what is happening. Rep. Pilon said he would also be willing to continue to see if there is a way to save the Program. He does not believe a sincere effort has been made to find federal money to bring into the Program to continue it.

Sen. Sullivan believed cancelling the Program was poor public policy at this time given the economy, and she does not feel it has been explained why the Program was being discontinued. Rep. Boland agreed.

Acting Chair Fossel asked Director Ashcroft if she had information regarding the GOMAINE Commuter Connections Program. She referred the Committee members to the information in their notebooks regarding their process for review requests. The Committee may ask OPEGA to gather more background information before the GOC makes a decision on the request, the topic could be placed "On Deck", or the Committee could vote to put it on OPEGA's current Work Plan. OPEGA has not done any research on the topic that they can provide to the Committee at this time. Distributed at the meeting were documents from GoMaine Riders and Nina Fisher from MaineDOT. (Copies of those documents are on file in OPEGA).

Acting Chair Fossel asked the pleasure of the Committee members.

Rep. Kruger wanted OPEGA to gather more information in anticipation of saving or resurrecting the Program. Sen. Craven and Sen. Sullivan agreed.

Rep. Pilon asked Director Ashcroft if a Rapid Response review would be more appropriate. Director Ashcroft did not know what it would take to get the information needed so she was uncertain. OPEGA could gather information on the State's system regarding the GOC's questions and bring the information back at the Committee's August meeting regarding the finances. The question of whether the Program should be kept is tangential to that and she wonders whether even a Rapid Response would bring back any information that the Committee would be able to act on before September 1st.

Acting Chair Fossel asked if it was appropriate to hear from individuals at the meeting who might have information regarding the GOMAINE Program. Director Ashcroft reminded the GOC that they were straying somewhat from the traditional way the Committee handles requests. Acting Chair Fossel said if information

received from individuals at the meeting could assist Committee members in making a decision for action, he wanted to make sure they have that information so the Committee does not make a decision that it regrets.

Acting Chair Fossel recognized Nina Fisher, Manager of Legislative and Constituent Services, MDOT. She summarized the Memo from her to the Committee. This topic was before the Transportation Committee and individuals from both sides of the subject addressed that Committee. Commissioner Bernhardt agreed to extend the Program from when it was going to end in May to September to allow for a smoother transition. The Transportation Committee felt that the extension of the Program was appropriate and did not seek legislation to extend it.

Rep. Kruger asked for clarification that the Program is supporting 109 State employees that is costing State Government \$500,000 a year. Ms. Fisher said that was correct.

Rep. Pilon noted in information in the GOMAINE Handbook that said that rideshare commuter fees would be used for replacement of vans and asked if that was the goal. Ms. Fisher said that was the goal and that when the Program started nobody wanted the State government to subsidize workers' travel to work with tax payer dollars. The goal was the Program would be self-sustaining, would generate enough revenue to replace vehicles. The last replacement of vehicles was in 2008 and MaineDOT has had to use bond money and investment from their capital work plan to replace vehicles. The fees have never been enough to purchase the amount of vehicles needed to sustain the Program at its current level. Had MaineDOT continued the Program they would have used a portion of the \$233,000 and a \$240,000 allocation from MaineDOT's capital work, which is Highway Fund dollars, to purchase replacement vehicles. That would have been a subsidy of \$240,000 going toward the GOMAINE Commuter Program. Following MaineDOT's review, it was decided not to spend Highway Fund money for that purpose.

In response to Rep. Boland's question of how much the fees would have to go up to retain the service Ms. Fisher said to retain the current 28 routes, their original estimates were between a 50-75% increase.

Acting Chair Fossel recognized Deborah Turcotte, spokesperson for the GOMAINE Riders.

In response to Sen. Sullivan's question of whether the Riders presented another plan, Ms. Turcotte said they presented another plan to the Transportation Committee. Members of that Committee had heard from some of the Riders regarding the Program ending and that they wanted to save it. The Transportation Committee did allow them to speak at a meeting and they were invited back for the public hearing on the issue. MaineDOT was also at the public hearing. Commissioner Bernhardt reported that 4 van pools had already signed up with private van pool companies, that there were 5-8 private van pool companies that were interested in providing services and that the rates would be comparable so the Transportation Committee did not hear from the Riders. The Committee said that the Riders had an extension until the end of August and at that time, the Program would end. What they had proposed in March was to form a Committee with staff of MaineDOT, Greater Portland Council of Governments and MTA, to figure a way to make the Program work. The money mentioned by Ms. Fisher that MaineDOT is allocating are federal funds. It is congestion, mitigation and air quality funds and is in the budget. In the Transportation bill that the Legislature just passed, the CMAQ money is to be allocated the same way it was in the previous Transportation bill, but it does not need to be matched by State funds. They are still getting the money for the Program. When the Riders had talked with the Federal Highway Administration they had not been told at that time that the van pool Program was ending. Ms. Turcotte thinks there are some funds that could be appropriately used to keep the Program going.

Rep. Boland noted that van pool riders going from Bangor to Augusta currently pay \$200 a month and asked how the ridership would react if they had to pay \$300 or \$350 per month. Would they still ride. Ms. Turcotte said they were hoping for an option that would only be \$275 to \$300 a month.

Rep. Pilon asked if the contracts from the private van pool companies would be month-to-month or annual. Ms. Turcotte said they would be month-to-month, riders would have to give a 30 day notice and they would

receive an invoice every month. It would have to be paid whether they had all the riders or not, and in addition the driver would have to sign the contract and would assume liability if anyone left. The driver would have to make sure the cost is covered.

Acting Chair Fossel asked the Committee if they had enough information to make a decision regarding what action to take on Rep. Pilon's request for a review.

Rep. Pilon recommended putting the topic "On Deck" or having a rapid response.

Director Ashcroft said her concern was that if the end goal was to see if the Program can be maintained beyond September 1st she was not sure what jurisdiction or avenue the GOC had to do that, regardless of what information OPEGA brought back. She does not know what has been approved in the Highway Fund budget to know whether this is just a matter of MaineDOT deciding that it will spend whatever money it has to continue the Program for another year, and does not know what authority the GOC has to demand that of the Department, even if that was the Committee's preference. She can bring information back to the GOC of whether the van pool service was self-sustaining and validate cost analyses, but even if that information was provided to the Committee in August she is not sure where that would leave them. If the van pool service has been subsidized with Federal funds so the rates are lower and the service was not a self-sustaining program on rider fees alone, Director Ashcroft saw that as a policy question about where the Federal funds should go.

Acting Chair Fossel said it was his opinion that the GOC could not talk about continuing the Program going forward. The GOC can review how the Program operated.

Sen. Sullivan suggested the matter be tabled until other members of the Committee were present.

Rep. Pilon would like to know how much money has been expended to the Greater Portland Council of Government for administering the Program for 2010 and 2011, look at that amount of money and what the alternative is if those dollars went to MDOT to administer the Program.

Director Ashcroft said OPEGA will do the preliminary research it usually does regarding a request topic that has come before the GOC regarding the cost analyses that have been done by MDOT and bring that limited research to the GOC at its August meeting.

Motion: That the Request for an OPEGA Review of the GOMAINÉ Commuter Connections Program be tabled. (Motion by Rep. Pilon, second by Rep. Fitzpatrick, unanimous).

Rep. Boland said because the Committee has heard two different views, asked if the GOC could get information on what the alternative cost is going to be for riders, the savings of the 450,000 miles and what the real costs would be for the private vans or the increases talked about earlier for the current Program. Director Ashcroft hopes MDOT has that analysis because for OPEGA to do that analysis it would be a lot of work.

Sen. Sullivan would like to know if the Program had continued would any of the CMAQ Federal funds gone to the GOMAINÉ van pool.

UNFINISHED BUSINESS

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

Rescheduled to the August 14, 2012 GOC meeting.

- **Review of Past OPEGA Report That DHHS Will be Reporting Back on at Future GOC Meeting:**

- DHHS Contracting for Cost-Shared Non-MaineCare Human Services – Report issued July, 2008

Not discussed.

REPORT FROM OPEGA DIRECTOR

- **Project Status Report**

Not discussed.

NEXT COMMITTEE MEETING

The next Government Oversight Committee meeting is scheduled for Tuesday, August 14, 2012 at 10:00 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 1:55 p.m. (Motion by Sen. Sullivan, second by Rep. Kruger, unanimous).