



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

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. BILL DIAMOND
SEN. EARLE L. MCCORMICK
SEN. GARRETT P. MASON
SEN. NANCY B. SULLIVAN
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
September 20, 2012
Accepted November 15, 2012

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 10:04 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Craven, Sen. Diamond, Sen. McCormick and Sen. Sullivan Absent: Sen. Mason
Representatives:	Rep. Burns, Rep. Pilon, Rep. Boland, Rep. Fitzpatrick and Rep. Fossel Joining the meeting in progress: Rep. Kruger
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Scott Farwell, Analyst, OPEGA Matthew Kruk, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	David Bernhardt, Commissioner, Maine Department of Transportation Stephen L. Bowen, Commissioner, Department of Education Cindy Brown, Director Child Development Services, Department of Education Jaci Holmes, Federal Liaison, 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.

SUMMARY OF THE AUGUST 14, 2012 GOC MEETING

The Meeting Summary of August 14, 2012 was accepted as written.

Chair Katz asked if there was objection to taking agenda items out of order. Hearing none the Committee moved to **Unfinished Business, Report Back From the Maine Department of Transportation.**

UNFINISHED BUSINESS

• Report Back From the Maine Department of Transportation

- Request for OPEGA Review of the GOMaine Commuter Connections Program

Director Ashcroft summarized what had taken place so far on the request for an OPEGA review of the GOMaine Commuter Connections Program (GOMaine). The GOC wanted to hear from the Commissioner of the Maine Department of Transportation (MDOT) regarding specifics on the finances related to the van pool and the policy decision that was made to discontinue GOMaine. At the Committee's request, Director Ashcroft drafted questions to MDOT that members wanted to have answered. She referred the Committee to the information in their notebooks received from MDOT in response to those questions and also to the responses received from the Greater Portland Council of Government (GPCOG) and the Maine Turnpike Authority (MTA).

Chair Katz recognized Commissioner Bernhardt.

Commissioner Bernhardt said it was a MDOT policy decision to stop the State run GOMaine van pool because basically the van fleet itself was getting old and 9 plus vans were going to have to be replaced. After reviewing several options, MDOT believed the best way to go was to private run van pools. The State run van pool is a subsidized service for about 260 people.

Chair Katz emphasized that some members of the GOC agreed with MDOT's policy decision to end GOMaine and others disagreed, but said the Committee's consensus was that it is not the role of the GOC to second guess the Department's policy decision.

Sen. Craven asked why private transportation was subsidized by the State and why adequate fees from the riders were not requested at the startup of GOMaine. Commissioner Bernhardt said van pooling was being promoted on a national level back in the 70's and thinks the subsidy was to get people to think about van pooling.

Rep. Pilon asked if MDOT looked at leasing versus buying vans and Commissioner Bernhardt said that had been checked in the past.

Rep. Pilon noted GPCOG was working with MDOT as the GOMaine administrators and asked the Commissioner to speak to their contract with GPCOG. Commissioner Bernhardt said van pool riders were only about 3% of GOMaine as a whole. GPCOG also provided other GOMaine services, gave MDOT status reports that included what had been done from the administration to van/car pool management, technology support, and outreach education and marketing.

In response to Rep. Pilon's statement that a portion of GOMaine was being financed with CMAQ money and the money was not drying up but being directed to other programs, Commissioner Bernhardt said CMAQ funds had been used for GOMaine. MDOT receives a certain amount of federal funds annually as determined by a formula and in 2012 MDOT received \$168.9 million in federal money and obligated \$168.9 million. Within the money there are different programs like CMAQ, National Highway System, Interstate Maintenance, etc. and the State can spend a certain amount in any one of the programs according to its rules and regulations. MDOT has huge needs for that money and can be used for such things as highway and bridge projects where there is an unmet need or structural gap of about \$150 million per year. As Commissioner he has to prioritize and has to look at where is best to spend the money. MDOT used a bulk of its CMAQ money to fund the operation of the Downeaster.

Rep. Pilon said the CMAQ money is to go to the congestion mitigation and air quality and that portion was funding the GOMaine Program. Commissioner Bernhardt said MDOT was allowed to use the money to acquire

vans or to operate the Downeaster, but that does not mean they have to. CMAQ talks about non-attainment areas in a state that do not meet the air quality standards. Maine does not have any of those areas, but does have a couple of maintenance regions. To maintain those regions does not require the use of all the CMAQ money and under federal rules MDOT can transfer that into other programs and use it for other reasons. In 2009 MDOT was asked by the Legislature to fund the operation, or half the operation, of the Downeaster and that was the funding that could be used.

Chair Burns asked if there was money left in the fund and where the unused funds would go after GOMaine ends. Commissioner Bernhardt said there are funds left and they will be spent on public transit.

Sen. Diamond said from the questions drafted by OPEGA to MDOT and MDOT's responses, he believes what is being discussed are policy issues. The reason the Commissioner was asked to the GOC meeting was because that was not clear in the Transportation Committee meetings, (Sen. Diamond is a member of the Transportation Committee), and in fact, the information provided for the GOC is more information than the Transportation Committee had received.

Rep. Fossel said MDOT's report in response to the GOC's questions was wonderful, but noted they must have spent an enormous amount of time preparing it. Commissioner Bernhardt said he could not give an exact amount of time MDOT put into their response, but it was a lot. Rep. Fossel hopes that MDOT's report is useful to the Department going forward because otherwise money has been wasted because the GOC asked to much.

In response to Rep. Pilon's question of what money was remaining in GOMaine and being transferred to transit the Commissioner said it is \$236,000.

Chair Katz asked if the demand is being met and going to be met by private providers for those who participated in GOMaine. The Commissioner said van pool riders' needs are being met and the cost to the riders is comparable to what they would have been paying.

The GOC thanked Commissioner Bernhardt and his staff for the information provided and for attending the meeting to answer their questions.

- **Report on Child Development Services**

Director Ashcroft reminded the Committee that the public comment period for this Report was held at their August 14, 2012 meeting. The GOC now needs to decide whether there is any additional action they would like to take with regard to the Report beyond what the Department of Education (DOE) itself has undertaken and committed to do. The GOC also needs to vote whether to endorse or not endorse OPEGA's Report.

- **Committee Work Session**

- › **Summary of Selected Public Comments Received by GOC**

Chair Katz recognized Commissioner Bowen.

Chair Katz said GOC members had received the Report of the Advisory Committee on Fair Competition With Private Enterprise with respect to the hiring and contracting practices of CDS. The majority of the Advisory Committee concluded that, from its perspective, CDS was not making enough effort to look first to the private provider community for provision of services to CDS children. He asked the Commissioner to explain his perspective on the Report.

Commissioner Bowen said there is a section in State statute that provides a process to hear and address concerns from citizens that the government is competing with them. There was a complaint brought to the Advisory Committee established in that statute regarding the competition between CDS and private providers. He thinks the ultimate result was that DOE had expressed as a Department, on the part of CDS, that they were

in the process of developing some common processes across the system. It is DOE's intent to establish a broad set of standards for each CDS site, moving from a decentralized system where the sites were largely making these decisions on their own to trying to establish some statewide standards. At the time he was appointed Commissioner there was a hiring freeze in place and they tightened that so at the very least the sites had to establish some justification for adding more staff. In the last legislative session legislation was passed that created a stronger role for Central IEU and now there is also OPEGA's Report recommendations. Some work has already begun on developing common standards. It is about looking at what the demands are in the region, what are the assets in the region in terms of providing services to the students and how do they build a model that works that meets certain criteria and standards for when people are hired or not. DOE brought this description of their plans to the Advisory Committee and the Committee wanted DOE to focus on it as a high priority. That Advisory Committee's recommendation to the Governor and back to the Legislature was that DOE needs to retain a heavy reliance on the private sector to provide services to children. DOE's intent is to develop the plans and report back to the GOC, Education and Cultural Affairs (EDU) and Appropriations and Financial Affairs (AFA) Committees. The plan and procedure will include CDS sites and the number of kids that will be served, how to determine which of those kids will get services from who and then how that impacts CDS staffing versus the reliance on the private sector.

In response to Chair Katz's question of whether DOE intended to introduce legislation in the next session to address the concerns that have been raised in the OPEGA report, Commissioner Bowen said only to the degree that the Legislature wants to memorialize in statute those processes, procedures and standards that DOE plans to implement. His intent in January is to inform the Committees where DOE is, what the processes and procedures are and what DOE thinks will work. Whatever DOE comes up with may cause concerns from the provider community or CDS so they will have to work through that and it will be up to the Legislature to decide whether they feel that there is a public policy objective that warrants statutory language to be put into place. He does not think they need more laws. What the OPEGA Report made clear is that DOE has not been doing a very good job of looking at cost implications of decisions. CDS needs to become a more data driven enterprise because you cannot build processes without the stream of data that is giving you the information to make decisions. The combination of the ability to now centralize the system and improve DOE's data systems, and to make sure DOE's systems are talking with DHHS' system is their intent and they can then start doing a cost benefit analysis.

Chair Katz asked for an update on the work of the Children's Growth Council that was described to the GOC at its last meeting. Commissioner Bowen deferred to Jaci Holmes. Ms. Holmes said CDS does have a State agency interdepartmental early learning team who has designed a work plan. A meeting will be scheduled with both Commissioners Bowen and Mayhew to review and finalize their cross-department work plan. The Growth Council is aware of their plans. There is also a sustainability committee looking at long term governance and sustainability. Four staff from DOE went to a meeting in Utah on State inter-agency data systems and came back having drafted a memorandum of understanding between DHHS and DOE that is being finalized and will be shared with DHHS so they can start building the cross-State agency data system. Ms. Holmes said they were meeting internally to look at what had been done to date on the early childhood data system and what the work plan will be going forward. They are actively working on the early childhood cross systems.

Chair Katz asked if the GOC could receive a copy of the work plan when completed and Ms. Holmes will provide the plan to members. She sits on the Growth Council as Commissioner Bowen's representative, and some of her colleagues are also part of the State Interdepartmental Early Learning (SIEL) Team that represents DHHS. There are five subcommittees or accountability teams of the Growth Council that include sustainability of data, family engagement, health, and early childhood accountability. All of those teams are looking at elements of some of the work that is in the SIEL work plan so everything is very much integrated. They are mapping what all the different services are for children 0 - 5 and all the various funding streams that align. They can make sure that the GOC has copies of that work as it is developing.

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Chair Katz asked what the GOC could expect to receive for information and would it include, for example, the ways they are providing afternoon care for kids 0-5, the public programs that are doing that, the population they are serving and the cost. He asked if that was the kind of information being developed. Ms. Holmes said yes, those are the very tasks that are underway. There is a roadmap of the various funding streams, what kinds of children they are serving within what age brackets and how universal is it across the State. The mapping process will take a couple of months to put the pieces together, but Ms. Holmes said it will be complete by the first of the year.

Chair Katz asked what the next internal step will be when the data has been put together. Ms. Holmes thinks the Growth Council will review it and might make recommendations as to what would be the appropriate next steps.

Chair Burns questioned whether the appropriate legislative joint standing committees would receive the reports issued by the different groups because if it is necessary to following up with legislation, the joint standing committees would be the entities to do that. Ms. Holmes said there are 2 members from DOE and 2 from DHHS that meet on a weekly basis as the State agency interdepartmental learning team. They have been keeping each of their Commissioners apprised. She thinks the next step is to have the two Commissioners review the work plan, authorize them to continue the work and then thinks both the EDU and Health and Human Services (HHS) Committees would be apprised of how this joint cross department work is moving forward for serving children 0-5 year olds.

Rep. Boland asked if parents will be able to get the information stated above and Ms. Holmes said they would. The Early Childhood and Development Standards Committee has been discussing what the standards will be and then there will be resources for each of those development domains that would come down to what kinds of activities are appropriate to help build that particular learning standard.

Commissioner Bowen said he has the report referred to by Ms. Holmes and plans to meet with Commissioner Mayhew to talk about what is doable with legislation and without legislation. He knows there will be questions next session, and he is almost certain there will be legislation proposed. The decision for DOE and the Governor is whether there are legislative initiatives they want to put forward and/or there may be things they decide the two agencies can just move on.

Sen. Craven asked if there was opportunity for providers to have input in the requirements or outcome that DOE is currently working on. Commissioner Bowen referred to Cindy Brown. Ms. Brown said there are multiple ways that providers can give input and that DOE can seek input. One would be through the public agency rule process. CDS is looking at some statutory or regulatory changes this fall and winter and public comment is an opportunity for providers to participate in that mode. Also, as Commissioner Bowen stated, the Advisory Committees are a great opportunity because they are public forums with public comment periods. People can also communicate via email or letter if they have questions, input, etc. Ms. Brown said she is accessible and available and people can email her if they have questions or concerns. She is contemplating developing a list serve so there is a ready way to provide updates or have a flow of information back and forth.

Sen. Sullivan wanted to be able to see how children were doing and asked what the State had done to see the progress in children being served. Commissioner Bowen said DOE reported that data to the EDU and AFA Committees last year and talked about the effect of early interventions on the later performance of kids. As a requirement of all the federal pieces, DOE also has to report all kinds of outcome data. She asked about how the average citizen would be able get someone to help when they don't receive the help they think should. Commissioner Bowen said the goal is that parents have a place to go when they have concerns and that is what DOE has been working on with DHHS. DOE has to build a system that goes to a system integration model that is not bureaucratic, and does not lead to dead ends that leaves a family unsure what the next steps are.

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Ms. Brown believes CDS has always struggled, or been challenged by, an identity crisis and in many towns, especially in the rural areas, CDS was known as the one stop shopping. Their federal requirements are the indicators for the State performance plan for infants and toddlers and then for ages 3 to 20. One of the requirements is that CDS measure and report publicly on the children's outcomes. She thinks that is where it can be seen what is happening with the child and whether they are getting to where they should be. It also has family outcomes.

Ms. Brown acknowledged that public relations is a huge need and is something CDS has done. They will continue to upgrade the programs and methods they use to make it helpful for families. She said the information provided to the Committee members at the meeting was to try to illustrate the work that is going on in terms of standardizing and improving the consistency around the entire State.

Director Ashcroft said Mr. Cobo-Lewis, one of the individuals that gave public comment at the last meeting, talked about making sure the reporting that comes to the Legislature is transparent. Currently in the CDS Statute there is a section that requires annual reporting to the Legislature and it lists a number of things that the report may include. Mr. Cobo-Lewis suggested that some of the "mays" in the Statute should become "shall" or "must" so the Legislature receives a report that includes the kind of things legislators want to know on a regular basis. If the GOC is thinking about potential legislation, Director Ashcroft suggested that OPEGA look at that section of the Statute regarding changes of "may" to "shall" and also look if there are other things the GOC now has been expressing that they would like to see reported to them on a regular basis that should be included in that statutory piece.

Director Ashcroft thinks CDS and DOE are well on their way to trying to address the other reported recommendations. The GOC could possibly establish a report back schedule for them to come before the GOC and/or one of the policy committees to give the status of their progress until such time the Legislature is comfortable the issues have been addressed to the degree they expected.

Chair Burns would like to see the Report Ms. Holmes referred to from the Interdepartmental Early Learning Team before taking further action. He would not want to duplicate efforts through legislation and would not want to speculate on what legislation should be necessary before reading the Report. Director Ashcroft said the work at that group was an expansion beyond the CDS program that OPEGA made recommendations on. That could be added to the list of things if the GOC wanted to be able to consider at some point in time what the Report says and whether there is further action the GOC may take in regard to that.

Chair Katz, while agreeing with Chair Burns, noted that the timing for the release of the Report is beyond when the current GOC would still be together so if there are some things these members would like to do, the Committee should get those in place now.

Sen. Sullivan asked if the GOC could put something together with a note that it is pending the results of DOE's Report in February, 2013 so that the work will be done and can move forward from there. She is afraid that if it is dropped now with nothing in place then future Committees will have to do more work to get where they are now.

Director Ashcroft said she understood the Legislature had legislation regarding an assessment of programs and services for 0-5 year olds and that appears to be in the works and CDS is a part of that. The GOC wants the results of the Report before deciding if there is anything that should be done after that. The Committee could vote to put on the "On Deck" list a possible study or review of the 0-5 year old services provided by the State with the first item being looking at the work that has been done and then assess whether there was anything the Committee felt deserved a more detailed look or any action the GOC thought it could take. Alternatively, the Committee could write a letter to the next GOC outlining what they were interested in and what it was hoping for from DOE's Report. Director Ashcroft does not think the Committee needs to wait for that Report. OPEGA has given a number of suggestions about how to improve the CDS Program itself. What she was

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suggesting is that the GOC could introduce legislation to improve the information being reported to the Legislature on the CDS Program itself.

Sen. Craven thinks the work done will be lost unless the Committee votes on what action they want to move forward on and schedule report backs from DOE to the GOC. Rep. Boland agreed and asked if Director Ashcroft could note particular actions for the Committee to take.

Director Ashcroft believes DOE will have a lot of things going on and their success in implementing what they have committed to do is going to be important in addressing the issues that OPEGA uncovered. At a minimum, it would be good to set a report back schedule to the GOC from the agency for the status of the actions they were taking so the Committee will know what has been done and can see the results of that implementation. The Director can develop a suggested report back schedule with dates of when DOE is planning to have some of their initiatives completed. She referred to the suggestion by Mr. Cobo-Lewis that had been previously discussed regarding changing the statute related to CDS' reporting because CDS had not been making an annual report to the Legislature as required by statute, and what was getting reported did not include the kinds of things that are laid out in the statute. Some members expressed that they would like to hear a report on what kind of success they have had for kids in CDS and this may be an opportunity to review what kind of reporting is required to come back to the Legislature. There may be additional things now that the Committee knows more about the Program and the struggles legislators had on various joint standing committees.

Chair Katz liked putting "On Deck" a more comprehensive look at 0 – 5 year old services in case the work that is in progress is not what the Legislature expected it to be. That would keep the issue alive with the hope being that it can be eliminated from the "On Deck" list at some point in time.

Director Ashcroft said a recommendation in OPEGA's Report required DHHS' Program Integrity Unit to be taking action on possible scenarios under which OPEGA thought there might be possible abuse or waste in the billing to MaineCare. She has not talked with DHHS again, but they did send a letter to the GOC, which is in the back of OPEGA's CDS Report, committing to taking a look at that seriously and taking some action. The GOC may also want to schedule a report back from DHHS on what they have done with regard to that recommendation.

Sen. Sullivan asked if the Program Integrity Unit would be doing anything with the Katie Beckett Program. In prior years the Legislature tried to trace those funds and could not. Director Ashcroft believes the Katie Beckett program is a subset under MaineCare. What OPEGA asked DHHS to be concerned about is MaineCare billing so she would hope Katie Beckett would be encompassed in that. She knows that the Katie Beckett program funds through MaineCare were used to pay for some CDS services. She can talk with the Department specifically about making sure that the Katie Beckett program funds are considered in whatever review that they do. Sen. Sullivan recommended that the GOC do that because there are a lot of people with concerns regarding the program. Director Ashcroft said that would be more appropriately addressed to Commissioner Mayhew than the Program Integrity Unit.

Chair Burns agreed with the above suggested follow-up work and Chair Katz suggested, in terms of additional reporting, add language that mandated that DOE also report on how they are coordinating their efforts with other services provided to the 0 – 5 year olds.

Motion: That the GOC take the following actions in response to OPEGA's Final Report on Child Development Services:

1. Directs CDS, the Department of Education and the Department of Health and Human Services to report back to the Government Oversight Committee the status and results of actions taken in response to issues raised in the OPEGA report on a schedule to be established by the OPEGA Director.

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2. Directs the OPEGA Director to draft amended language for the GOC's consideration for Title 20-A § 7209 sub§ 4 ¶ D to enhance the reporting on the CDS Program to the Legislature.
3. Moves the topic of Publicly Funded Services for Children Birth to Five Years onto the "On Deck" List with the intention that OPEGA and the next GOC will review the reported results of the children's task forces that are currently meeting and consider whether further review of this topic area to identify overlaps and gaps in services is needed.

(Motion by Sen. Sullivan, second by Sen. Craven, with an amendment by Rep. Boland, second by Sen. Sullivan, Passed unanimous vote 11-0.)

- Committee Vote

Motion: That the Government Oversight Committee accepts OPEGA's report on Child Development Services. (Motion by Rep. Fitzpatrick, second by Sen. Craven, Passed unanimous vote 11-0).

RECESS

The Government Oversight Committee recessed at 12:30 p.m. on the motion of Chair Katz.

RECONVENED

Chair Katz reconvened the meeting at 1:12 p.m.

The members of the GOC approved the draft letter to the Environmental and Natural Resources Committee from the GOC regarding Juniper Ridge Landfill.

NEW BUSINESS

• Project Direction Recommendation for OPEGA's Review of the Maine State Housing Authority

Director Ashcroft said when OPEGA begins a larger review they do preliminary research with the goal of understanding some of the areas of focus that the GOC seemed to be interested in. They gather enough information and work to a point when they can return to the Committee with recommendations of whether it would be worth continuing with a review of the topic or not, and if so, suggested questions that might be worthwhile asking. She referred the Committee to OPEGA's Recommendation for Project Direction of the Maine State Housing Authority. A copy of the Recommendation is attached to the Meeting Summary.

Sen. Craven asked if during OPEGA's Review of Certain Expenditures at Maine State Housing Authority (MaineHousing) they looked at any of the federal auditing that MaineHousing is subject to. Director Ashcroft said OPEGA did get an understanding of what kind of federal auditing is done on what schedule and scope. She feels comfortable saying that whatever OPEGA would suggest to the GOC for a topic would not be something that crosses over or is duplicative to anything the federal government might do.

If the GOC desired to continue with a review of MaineHousing, OPEGA suggested reviewing the weatherization program with a focus on the questions:

Is the weatherization program achieving satisfactory results? If not, why not? If so, what are the primary factors contributing to its success?

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Sen. Craven asked what the relationship was between the weatherization program and Efficiency Maine. Director Ashcroft said that was another reason why OPEGA chose that program. They appear to be both energy efficiency programs so she does not know if there should be any coordination between them.

Rep. Boland liked looking at weatherization because a lot of people are interested in it and is timely with energy prices continuing to dominate the environment.

Rep. Fossel said as he has watched the weatherization program over the years, it did not seem like funds were being misappropriated, but that there was an ideological filter on how money was being spent, appropriated or used. When decisions are made on how the money is spent, it should be to support the mission statement of the program that they are spent under and it has not seemed that way to him for a long time.

Chair Burns agreed and said it appears nobody is addressing the weatherization issue. He would like to go back to see how the money was spent, under what philosophy and whether they were in fact following the policies of the program. Whatever direction was being followed then is probably going to change in the future, but it is important for the public, and for him, to know what had been going on for the last few years.

Sen. McCormick said issues from the public regarding the weatherization program could have been addressed at MaineHousing but the perception seems to be that MaineHousing does its thing and doesn't answer to anybody. So the people with questions and concerns cannot get them addressed, and therefore, some contact legislators. He gave an example of a constituent having weatherization work done at his home and the money paid out to do the job and then the money paid to make corrections on work done by the contractor. Director Ashcroft thinks the contractors are getting hired and paid through local CAP agencies. OPEGA has heard about those concerns and saw some of it in the expenditure review they did. If OPEGA looked at the weatherization program, and if that was a problem, it might have implications for some of the other programs where MaineHousing is using contractors.

Rep. Pilon said OPEGA did a rapid response of MaineHousing and thinks that the concerns of Rep. Fossel and Chair Burns were addressed so he does not think the GOC needs to duplicate those efforts. He would not support any efforts to go back and review the issues once again.

Rep. Fossel agreed with Rep. Pilon that he did not want OPEGA to duplicate any work, but to make sure there are safe guards in effect so government programs cannot be used to drive missions that are outside their mission statement. MaineHousing has a series of things they are supposed to do and his expectation is that they do those in a non-ideological and non-political manner as possible. If that is not happening, the question then is, are other quasi-governmental organizations operating in a similar manner. Rep. Fossel's concern is not what has happened in MaineHousing, but what could happen in another quasi-governmental organization if they get a leader who has an agenda. He would like to look at the weatherization program to see if any of those kinds of things have gone on.

Sen. Craven thinks the interim director had laid out a path for the agency earlier in the year during OPEGA's rapid review. She agrees with Rep. Pilon regarding duplicating and said some members keep comparing MaineHousing to the Maine Turnpike Authority and it is a different organization.

Sen. Sullivan said OPEGA completed a rapid response and no fraud was found, the former MaineHousing director resigned so the agency could move ahead and she thinks it is time to let the new Board and MaineHousing staff do their work. She does think it is appropriate to ask for a report back to the 126th Legislature as to what has happened.

Director Ashcroft said OPEGA did not suggest the weatherization program because they think there is fraud or even any concerns whatsoever in the program. Part of what OPEGA is here to do is to review a program, see how it is operating and whether there can be any improvements in it, and that is why weatherization is being recommended. It is a program that should be bringing benefits to the low income citizens it serves and the State

overall. The scope OPEGA suggested is about satisfactory results. Some folks are starting to get the impression that OPEGA only gets asked to do something if somebody thinks there is a problem. While that is one reason to have OPEGA do a review, it is not the only reason to look at a program, project or agency.

Rep. Fitzpatrick said look at the name of the organization – Office of Program Evaluation. The weatherization program is just a piece of MaineHousing and she thinks sometimes there is too much protesting going on. Chair Burns agreed. He said the rapid response was done for a very specific set of circumstances and because of the rumors at that time, the GOC asked OPEGA to do it rapidly. It did indicate, at least on the basis of what inquiries the GOC made, that there was no indication of fraud, but he did have concerns about how the money was spent, not in a fraudulent manner, but in a sloppy manner.

Chair Katz recognized Peter Anastos, Chair, MaineHousing Board, who had requested that he be allowed to speak briefly.

Mr. Anastos said MaineHousing is doing a lot of work on its own regarding programs and does not want OPEGA to duplicate their work. He said the problem was that MaineHousing lost focus, and as a business person, it was difficult to figure out where the money was going. Mr. Anastos said the Office of Inspector General is going to be issuing a report in about two weeks that is going to be awful and that is the sort of thing that never should have happened. MaineHousing is going to have to pay money back for things that happened in previous years. He said there is so much money spent on weatherization that they did want to find out what was going on and the results were not being measured. Bigger problems that the Board is addressing is \$7.1 million spent on computer applications over a number of years that are not yet complete. At least \$1.3 million of tax payer money was spent on the carbon credits program and MaineHousing's Director of that program said the program should be cancelled for now. MaineHousing is doing an audit on RFP's that had not been done properly. The Board did ask that when they do their audits regarding the \$7.1 million on computers and the \$1.3 million on carbon credits program, if OPEGA could review the reports from those audits and provide any additional input.

Chair Katz thinks there is some discomfort in the public about the weatherization program. Related to keeping people warm, there have been similar concerns raised, particularly about the administrative costs for the LIHEAP program. If members were going to move forward on the review, LIHEAP should be added because it is administered through MaineHousing. Chair Katz believes the topic is a program evaluation piece and would agree to move ahead with it.

Motion: That the Government Oversight Committee directs OPEGA to proceed with the Maine Housing Authority review with a focus on the following questions related to the Energy Assistance programs administered by Maine Housing – noting that the wording on the second question may be adjusted by the OPEGA Director and reviewed with the GOC in November.

1. Is the weatherization program achieving satisfactory results? If not, why not? If so, what are the primary factors contributing to its success?
2. Is the LIHEAP program being administered effectively and efficiently such that LIHEAP funds are providing assistance to as many eligible homeowners as possible?

(Motion by Rep. Boland, second by Chair Burns, passed, vote 7-3-2.) (Sen. Sullivan, Sen. Craven and Rep. Pilon voting against the motion and Sen. Diamond and Sen. Mason absent for the vote.)

Chair Burns said the Committee also should address the request from Mr. Anastos regarding OPEGA's review of the two audits the MaineHousing is having done regarding computer programs and the carbon credits program. He asked Director Ashcroft how OPEGA would pursue that request. Director Ashcroft said it was her understanding that MaineHousing was going to hire an outside consultant to look at both matters and the MaineHousing Board would be looking to OPEGA to review the final report of the consultant to see if it contained

anything that OPEGA may either question the consultant about further or that might need some additional work on the part of MaineHousing to address. She anticipates it would be reviewing the work of the consultant.

Motion: That the Government Oversight Committee include the two requests made by the MaineHousing Board Chair that OPEGA review the results of the audits done on the computer program and the carbon credits program. (Motion by Sen. Sullivan, second by Sen. Craven, passed 10-0).

UNFINISHED BUSINESS

- **Report Back From Department of Health and Human Services** (Commissioner Mayhew)
 - **MaineCare Durable Medical Equipment and Medical Supplies – Report issued July, 2009**
 - **DHHS Contracting for Cost-Shared Non-MaineCare Human Services – Report issued July, 2008**

The Government Oversight Committee postponed this agenda item until its November 15, 2012 meeting.

REPORT FROM OPEGA DIRECTOR

• **Project Status Report**

Director Ashcroft updated the GOC on the status of OPEGA reviews.

In the rapid response review of the **Communications Regarding MaineCare Computer System Weaknesses** OPEGA is wrapping up the fieldwork and it is the expectation to give the report to the Committee at their November 15th meeting.

Maine State Housing Authority will be moving to the fieldwork phase with the scope questions approved by the GOC at today's meeting.

Office of Information Technology is one that Director Ashcroft is having a difficult time judging where OPEGA's value would be in spending its resources in this area. She met with OIT's Chief Information Officer who informed her that there is a lot of change going on in the organization. She might suggest that the CIO come before the GOC to brief them on what is going on and talk about how it relates to the issues that had led to having the topic on OPEGA's Work Plan. At this time Director Ashcroft does not know whether it would be of value to spend the funds to hire a consultant to assist with the review and may be adding a discussion of this to the November agenda.

Public Utilities Commission is in progress and OPEGA will be proceeding on it as staff resources are freed up. She wanted to make the Committee aware, in the interest of full disclosure, that she was formerly employed with Central Maine Power Company. It has been eight years since she has been there and she did not work at CMP in any capacity where she directly interfaced with the Public Utilities Commission in any way. She does not believe that her prior work experience with CMP would impair her objectivity on this review, but given that perceptions are very important, wanted to make the Committee aware of it. If for any reason, the Committee has any discomfort with it, OPEGA will go into the mode of removing her from the review. The Committee members did not see any issues relating to Director Ashcroft being involved with this review.

Special Project: Technical Assistance for Education Committee Contracted Study of Education Funding is being worked on by Wendy Cherubini, Sr. Analyst, OPEGA who has been working with OPLA staff. The Education Committee is meeting today to consider who they will hire for a consultant. The project is going well so far and once the consultant is hired, OPEGA will go into the mode of assisting with monitoring the consultant's progress and work product.

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Rep. Pilon requested that the GOC go back to the request for an OPEGA Review of the GOMaine and specifically about the \$236,000 left in the Program. Commissioner Bernhardt said MDOT was going to roll those funds over to the transit fund and that is an issue with a number of people who were participants. Funds were deducted from State employees' checks that they thought was being used, or put in a reserve account, to pay for new vans. Today the GOC learned there is \$236,000 that is going to be transferred to the transit fund. Rep. Pilon suggested that the GOC get an opinion from the Attorney General's Office to see if those dollars are the State employees' money.

Chair Katz said he was uncomfortable having the GOC take any action because the Commissioner was not given an opportunity to explain the issue from his perspective. MDOT may have a written decision from their own counsel regarding the funds so would be reluctant to take that step. A lesser step might be to invite Commissioner Bernhardt back to explain. Sen. Craven recalled MDOT thought riders received fair market value for the service they got when using the vans. The program was subsidized through federal and state dollars and that is where the money would be going back to.

Rep. Pilon suggested that the GOC write Commissioner Bernhardt a letter asking for an interpretation instead of asking him to come back to a meeting. Director Ashcroft asked if Rep. Pilon's issue was whether the contract with the riders left them with the impression the money was only to be used for certain things and is why he was requesting an opinion from the AG's Office. The \$236,000 goes back to even before 2002.

Chair Burns said if it was a distinct agreement for the money to go into new vans and that didn't happen, he would also like an explanation. A letter to Commissioner Bernhardt and his response would probably clear up the matter as to whether or not it should be included in subsidized transportation, or it should be money that is returned to the people who paid.

Rep. Fitzpatrick asked if any Committee member had suggestions as to how the money would be paid to those going back ten years.

Rep. Fossel agreed that sending a letter to the Commissioner made sense.

Sen. McCormick does not think that riders were charged for anything other than what they agreed to and for services they received.

Rep. Pilon said the riders were under the impression that the money that was being taken from their checks was to create a reserve account to purchase new vans not for current services.

Motion: That the Government Oversight Committee write a letter to the Commissioner of MDOT asking him to explain what the \$236,000 is that is being transferred to the transit fund and is that in relationship to \$233,000 that the commuters believe is their share of that money. (Motion by Rep. Pilon)

Following Committee discussion and agreement Rep. Pilon's motion was amended as follows:

Motion: That the Government Oversight Committee write a letter to the Commissioner of MDOT stating it is the view of some Committee members that the money paid by riders was to be set aside for the purchase of new vans and ask the Commissioner for his comment on that perception and MDOT's view of what that money was set aside for. (Motion by Rep. Pilon, second by Rep. Fossel, passed 6-3.) (Opposed Sen. McCormick, Sen. Craven and Rep. Fitzpatrick.)

NEXT COMMITTEE MEETING

The Government Oversight Committee's next meeting is scheduled for November 15, 2012 at 10:00 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 2:58 p.m. (Motion by Rep. Fitzpatrick, second Rep. Fossel, unanimous.)

OPEGA Recommendation for Project Direction

Maine State Housing Authority

Background

The Government Oversight Committee (GOC) first considered a review of the Maine State Housing Authority (MaineHousing) at its February 4, 2011 meeting and moved the topic to OPEGA's work plan at its October 18, 2011 meeting.

OPEGA was not expecting to begin work on this review until at least March 2012. However, at the January 27, 2012 GOC meeting, the Chairs asked the Committee to consider moving a limited piece of the MaineHousing review to a rapid response project, due to a great deal of publicity surrounding certain MaineHousing expenditures and vendors. The Committee voted unanimously to authorize OPEGA to undertake this work. OPEGA completed this rapid response review and presented its findings at the May 25, 2012 GOC meeting.

OPEGA conducted preliminary research for the current, broader review from the end of July to the beginning of September 2012. The focus has been on gaining a general understanding of MaineHousing's operations and programs, learning what questions or concerns exist about the Authority, and reviewing prior audits or studies of MaineHousing or its peers in other states. Our work has included:

- reviewing potential issues noted from OPEGA's earlier Rapid Response Review of MaineHousing's expenditures;
- obtaining input from the MaineHousing Board of Commissioners;
- reviewing and summarizing unsolicited comments and concerns that were submitted to OPEGA;
- analyzing MaineHousing's expenditure data;
- reviewing publicly available reports and plans produced by MaineHousing, including the Government Evaluation Act report;
- reviewing statutes, rules, and policies related to the Authority;
- reviewing the recent legislative history of the Authority;
- soliciting perspectives from legislators, including members of the Legislature's Labor, Commerce, Research and Economic Development Committee;
- reviewing publicly available information describing MaineHousing's mission;
- reviewing MaineHousing's organizational chart;
- gaining a general understanding of MaineHousing's programs and processes;
- reviewing historical committee information obtained from the legislative Office of Policy and Legal Analysis and Office of Fiscal and Program Review; and
- gathering information from reviews of housing authorities in other states and prior reviews of MaineHousing in Maine;

Several concerns or areas of interest were readily identified from these sources. Consequently, OPEGA did not spend the additional resources to undertake a comprehensive risk assessment of MaineHousing in search of additional potential risks and concerns that might be worthwhile to review.

Summary of Preliminary Research and Analysis

Overview of the Maine State Housing Authority

The Maine State Housing Authority was created by the Legislature in 1969 as a public body corporate and politic and an instrumentality of the state to address the problems of unsafe, unsuitable, overcrowded, and unaffordable housing. MaineHousing has a Board of Commissioners consisting of ten individuals, eight of whom must be appointed by the Governor in accordance with statutory criteria. The appointments are subject to review by the joint standing committee of the Legislature having authority over economic development, and confirmation by the Legislature. The ninth commissioner is the Treasurer of State who serves as an ex officio voting member. The tenth commissioner is the director of MaineHousing who serves as an ex officio nonvoting member.

MaineHousing pays for its operating costs through a combination of resources generated from lending activities and administrative fees paid to MaineHousing from federal programs administered by the authority. No State General Fund money is used to pay MaineHousing personnel or operating costs.

MaineHousing's stated mission is to "assist Maine people to obtain and maintain decent, safe, affordable housing and services suitable to their unique housing needs." To achieve its mission, the Authority not only finances affordable housing, but also administers several federal housing-related programs on behalf of the State. MaineHousing administers programs that can be categorized as follows:

Home Buying Assistance: MaineHousing provides low-interest rate loans and other assistance to help make homeownership affordable and achievable for low to moderate-income homebuyers.

Home Improvement: MaineHousing offers several programs to help lower income homeowners with their home improvement needs by providing grants or low cost loans for health and safety related repairs and improvements.

Homeless Assistance: MaineHousing's homeless assistance programs finance emergency shelters, offer rental assistance to people who are homeless and working toward self-sufficiency, and provide assistance with security deposits.

Rental Assistance: The Section 8 Housing Choice Voucher Program provides rental assistance to income-eligible tenants by subsidizing a portion of their monthly rents and paying it directly to their landlords.

Energy Assistance: MaineHousing's energy assistance programs assist people who cannot afford to heat their homes or pay their electric bills (LIHEAP) and who would benefit from energy efficiency improvements (Weatherization).

Housing Development: MaineHousing offers a variety of programs to finance development of affordable housing, including low income housing tax credits, development loans, direct development subsidies, and affordable housing tax increment financing.

Additionally, MaineHousing has undertaken a Carbon Credit Project in which the Authority has developed the tools to measure, report, and sell investment grade carbon savings from home energy retrofits.

Areas of Interest

During preliminary research, OPEGA heard about numerous areas of interest or concern from both solicited and unsolicited sources. A majority of the comments and concerns were generally encompassed in the following areas:

- Housing Developments: Costs and Cost Drivers
- Selection and Oversight of Contractors
- Information Technology Expenditures

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- Weatherization Program Process and Administration
- The Carbon Credit Project

OPEGA conducted further research into these specific areas to identify potential review topics that may be valuable uses of OPEGA's resources for further work. Additional information surrounding these areas includes the following:

- **The Carbon Credit Project:** OPEGA noted concerns about the level of expenditures associated with the project, the project's connection to MaineHousing's mission, and its overall profitability. This program is currently being shelved per the advice of MaineHousing's Carbon Quantification Project Coordinator as the project is not likely to be profitable in the near future.
- **Information Technology Expenditures:** The MaineHousing Board of Commissioners has recently authorized an audit, to be conducted by an outside consulting firm, of the expenditures associated with two of MaineHousing's computer applications which constitute a large percentage of IT expenditures.
- **Contractor Selection and Oversight:** OPEGA noted concerns about how some of MaineHousing's vendors and contractors were selected. As a quasi-governmental agency, MaineHousing will need to become compliant with the new legislation governing contracting practices by quasi-governmental agencies. Concerns noted in this area should be addressed by compliance with the legislation.
- **Weatherization Program Process and Administration:** Several concerns and questions were expressed to OPEGA regarding this program including effective administration of the program to ensure quality, program results and how the applicants are prioritized. MaineHousing received an ARRA Weatherization grant totaling approximately \$48 million from July 2009 through June 2012. In 2011, 2,799 low-income homes and apartments were weatherized with a value to clients of \$18.1 million. Maine's funding for weatherization is reverting back to pre-ARRA levels: approximately \$6.3 million in FY12. OPEGA is not aware of any proposed changes to the Weatherization Program at this time.
- **Housing Development Costs and Cost Drivers:** OPEGA noted several concerns related to housing development policies and costs, particularly factors driving costs such as policy decisions, non-housing developer requirements, process issues, and the rehabilitation of old buildings. In 2011, 401 new, affordable rental units were completed for families and seniors, as well as 11 units for people with special needs and 33 units for people who are homeless. These projects had a total cost of \$74,845,913 with MaineHousing providing a subsidy of \$26,696,760. MaineHousing's Board of Commissioners has recently changed the Qualified Allocation Plan (QAP) addressing development costs, including a new category for total development costs as the highest scoring category in the QAP, the elimination of green building standards, and other category amendments.

OPEGA Recommendation

There have been significant changes in governance, management and some policies at MaineHousing since the GOC first put this review on OPEGA's Work Plan. MaineHousing's Board of Commissioners continues to be active in understanding and addressing certain areas of concern and exercising the additional authority that was granted to it in legislation passed in the spring of 2012.

These recent and on-going changes, MaineHousing's efforts to become compliant with the newly enacted requirements for quasi-independent state entities, and the Board's current level of oversight would seem to limit the value of a detailed OPEGA review of many of the areas of interest identified at this time. In fact, the changes made in the governance and management of the Authority are so significant that the GOC may wish to consider whether it would be appropriate to discontinue further detailed review of MaineHousing at this time, and instead place the Authority on the On Deck list to revisit for a possible review at a future time when the recent policy and management changes have been fully implemented.

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If the GOC desires to continue with a review of MaineHousing, it will be necessary to focus the review on a specific program, function or activity in order to complete the project in a reasonable timeframe. Of the areas of interest noted during preliminary research, OPEGA would suggest reviewing the Weatherization Program with a focus on the question:

Is the weatherization program achieving satisfactory results? If not, why not? If so, what are the primary factors contributing to its success?

The Weatherization Program is currently expected to continue into the future and has yet to be examined by the Board of Commissioners. A successful weatherization program should bring multiple benefits to the low-income citizens it serves and advance State energy efficiency goals overall. It is a more defined program than some of the other areas of concern, which should allow OPEGA to complete the review more timely than some of the topics with greater complexity. OPEGA also sees potential for a focus on this program and question to touch on several other areas of concern noted, i.e. how weatherization results are being quantified toward carbon credits, computer systems related to these efforts, quality of workmanship, customer satisfaction and accountability. If the administration and delivery mechanisms for this program are similar to other MaineHousing programs, then any issues identified and recommendations made could have positive implications for those other programs as well.

OPEGA expects this suggested review could be completed by the end of the first quarter 2013.