



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

MEMBERS:

SEN. MARGARET M. CRAVEN
SEN. LAWRENCE BLISS
SEN. EARLE L. MCCORMICK
SEN. NANCY B. SULLIVAN
SEN. DAVID TRAHAN
REP. DONALD E. PILON
REP. ANDREA M. BOLAND
REP. JOYCE A. FITZPATRICK
REP. LESLIE T. FOSSEL
REP. STEPHEN D. LOVEJOY
(VACANT SENATE MEMBER)

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
May 13, 2011

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:36 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Trahan, and Sen. McCormick
Absent: Sen. Craven and Sen. Sullivan

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

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

Executive Branch Officers
And Staff Providing
Information to the Committee: Scott Ferguson, Director, Department of Corrections' Service Center

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

Chair Katz asked if there was objection to taking an item out of order. Hearing none he moved to **New Business, Request From Energy, Utilities and Technology Committee for OPEGA Review of Maine Green Energy Alliance.**

- **Request From Energy, Utilities and Technology Committee for OPEGA Review of Maine Green Energy Alliance**

Chair Katz asked Director Ashcroft to brief the GOC on the Energy, Utilities and Technology (EUT) Committee's request for an OPEGA examination of the Maine Green Energy Alliance (MGEA).

Director Ashcroft said members of the EUT Committee unanimously requested an OPEGA examination of the manner in which the MGEA administered funds as a sub-awardee of a federal grant received by the Efficiency Maine Trust. The request asked that OPEGA determine:

1. How the federal grant funds were used;
2. Whether they were administered in accordance with the Grant requirements and applicable state laws; and
3. Whether all the funds have been properly accounted for.

Chair Katz had spoken with the EUT Committee Chairs and they thought OPEGA was in a better position to explore the topic than their policy staff. He asked how often in the past did the GOC receive similar requests from Joint Standing Committees. Director Ashcroft said there have been requests for an OPEGA review from former legislative committees and previous GOCs welcomed the requests.

The Committee's discussion regarding the request for a review included:

Sen. Trahan referred to the rapid response process in OPEGA's statute and suggested the GOC may want to consider using that procedure for this request.

The GOC Chairs wanted to make sure the Committee remained nonpartisan and Sen. Katz asked if the request from the EUT Committee was a unanimous request. Director Ashcroft said it was.

Motion: That the Government Oversight Committee instructs OPEGA to conduct a rapid response review of the issues as described in the memo dated May 4, 2011 from the EUT Committee. (Motion by Sen. Trahan, second by Rep. Pilon)

Discussion:

In response to Chair Katz's question of whether OPEGA would have to hire an outside consultant to do or help with the review, the Director said no.

Rep. Boland asked for an estimate of hours needed for the review.

Director Ashcroft said the EUT Committee has already provided a lot of documents for OPEGA to review and she will be able to answer that question once the review begins.

Chair Burns asked how the request would fit into OPEGA's current work.

Director Ashcroft said the other projects OPEGA is working on for the GOC may get delayed for a little bit, but she will not have to put all OPEGA staff on this request so other reviews will continue.

Vote: The above motion passed by unanimous vote of 10-0.

NEW BUSINESS

- **Presentation of Information Brief on Certificate of Need License Process**

Director Ashcroft presented OPEGA's Information Brief on Certificate of Need.

The GOC's questions and comments included the following:

Rep. Pilon asked if the employees were appointed. Director Ashcroft said the Commissioner is appointed and the other employees are State employees. Their job is to process and analyze the license applications against the Program's statute and rules and make recommendations. She does not see the opportunity for them to be swayed in the work they are doing by any particular group or individuals. The statute specifies that the Commissioner cannot be contacted or communicated with by anyone other than the staff through the process. There is input provided by the Bureau of Insurance, and they may also ask for input from the Maine Quality Forum or the Maine Center for Disease Control. The intent is that a thorough analysis is conducted and to have an independent decision.

Sen. McCormick said the Health and Human Services (HHS) Committee has a bill that would completely repeal the Certificate of Need Program. That Committee also held a bill over that would change the threshold levels and make more minor changes. He thought it would be helpful to the HHS Committee to receive OPEGA's opinion.

Rep. Fossel noted that the HHS Committee voted unanimously on another bill to create a Joint Select Committee on Health Care Costs. Director Ashcroft said an opinion on whether or not to continue the Certificate of Need (CON) Program is a policy choice and OPEGA does not typically weigh in on those. As noted in the Information Brief, nationally CON remains a controversial topic for a lot of states. Some repealed their programs, but kept in place mechanisms for limiting the amount of investment or cost that is going into their health care systems. Other states have maintained their programs. To provide information that may help the HHS Committee make that policy choice would require OPEGA to look at whether the program is effective in meeting the intent in statute and that would be beyond the scope of this limited review. OPEGA was trying to assess whether the process being used to make the determination is consistent, transparent and based on reasonable factors. OPEGA saw a lot of rigor and opportunity for public input and for people to understand what the foundation was for any decision existing.

Chair Katz asked the amount of State dollars and the applicants' costs to go through the process.

Director Ashcroft believes it is \$1,000 per million dollars of the project. For the 13 applications reviewed by OPEGA, the cost applicants paid toward that process ranged from \$3,000 to \$250,000. The primary cost to the State is the actual costs for the manager, 3 analysts and administrative support.

Chair Katz asked the basis on which the 2 projects were rejected. Mr. Farwell believed the projects were withdrawn, more than rejected, because they were not going to get the Certificate.

Chair Katz asked if Sen. McCormick, Senate Chair of the HHS Committee, could give the GOC a summary of the thought behind their majority report to eliminate the CON program. Sen. McCormick believes some had to do with the analysis that other states have done away with the program and also the Administration took a stand to eliminate it.

Rep. Pilon asked what the other states put in place when eliminating the CON program. Sen. McCormick thinks the states went back to what they had prior to when the feds initiated the CON program and made States adopted it.

Rep. Fossel recalled testimony at the HHS Committee that for a number of states who eliminated the CON program the costs had not gone up. The concern is Maine is in a unique position because essentially all of its major health care facilities and hospitals are all nonprofit and accept anybody who walks through the door. The issue on the CON program is if an independent, for profit, surgical center were to come into Maine and focus only on people they could receive a high reimbursement for because that would cut into the business of local hospitals who would be left with MaineCare and Medicare patients, who reimburse at a much lower rate.

Chair Katz suggested OPEGA's Information Brief be emailed to all legislators and that the GOC take no action at this time but wait to see what action the Legislature takes.

Members of the GOC agreed.

UNFINISHED BUSINESS

- **Work Session on Maine Turnpike Authority Report**

- **Review of Draft Letter From GOC to MTA Board**

Director Ashcroft said at the last meeting the Committee discussed the MTA Board reporting back to the GOC on what other actions they might take in addition to what they are working on with the MTA management. The Committee had asked the Director to draft a letter to MTA and she directed the Committee to the draft letter in their notebooks, noting they had to decide on a specific report back date to be added to the letter.

Chair Katz asked if any member had changes to the draft letter.

Rep. Fossel said there should be standards regarding how a Board should act and what constitutes their responsibilities and he did not think the MTA Board had any set of standards and responsibilities. Board members have to take responsibility and that should be a recommendation.

Sen. McCormick noted on the 3rd bullet of the draft letter the word “the” should be inserted before the word Board.

Rep. Boland agreed with Rep. Fossel and suggested they include what, if any, the existing standards are.

Rep. Fossel said there should be the same standards for all the Boards, not just MTA.

Chair Katz agreed and asked Director Ashcroft to add that to the list of items the GOC will be looking at in terms of a Committee bill system wide. As the GOC goes over the process during the interim, they might want to contact individuals who have board expertise.

The GOC agreed to have the MTA Board report back to the Committee in July, 2011. The draft letter with the noted changes will be sent to the MTA Board members.

- **Consideration of OPEGA Recommendation on Project Direction**

- **Child Development Services**

Director Ashcroft said OPEGA completed preliminary research on this program and considered:

- the past and current history of significant program overruns of appropriated funds;
- the quasi-independent structure through which the program is managed and services are delivered;
- the potential for future increases in the number of children that are identified and eligible for services under this program; and
- similarities between this program and others reviewed that resulted in significant recommendations for improvement.

OPEGA recommended continuing the review with a focus on fiscal management and stewardship of program resources. They specifically suggest addressing the following sets of scope questions:

1. What processes and controls does CDS use to manage and contain program costs when establishing plans and providing services to children? Are they sufficient to assure that services are reasonable and necessary to produce the desired outcome, and that related billings are accurate and appropriate? Do they assure CDS human and financial resources are utilized efficiently and productively, and that costs are otherwise minimized to the extent possible?
2. How much of the funding for CDS is expended on administrative costs versus direct delivery of services? What are the primary components of the costs for direct delivery of services? How do administrative and direct delivery costs compare among CDS sites? What are the reasons for any significant trends or differences in costs and do they suggest any opportunities to reduce costs?
3. What entities have a role in overseeing and managing the CDS program and what is each role? Which entities have responsibilities with regard to budget development and monitoring? How effectively does each carry out those responsibilities? Are there any gaps in oversight or management that could negatively impact finances, or transparency and accountability?

Director Ashcroft expects there would be substantial work involved in addressing these questions and any issues that may be identified, particularly since there are multiple, somewhat independent, CDS sites that would be involved. OPEGA would strive to have this review completed and ready to present to the GOC within the first two months of 2012.

Chair Katz heard, and OPEGA has alluded to, that some of the services are provided by CDS employees themselves and some are contracted out to private providers. He also heard that private providers are less expensive than the in-house employees and vice-versa and asked how the decision is made as to whether a particular child gets served in-house or by the private provider.

Director Ashcroft said that will be addressed under question 1.

Chair Katz thinks Sen. Alford has a bill before the Education Committee to combine all services for children 0-5, and may also include establishing a study committee. He wanted to make sure that those efforts, and those of OPEGA are consistent.

Chair Katz recognized Rick McCarthy from Eaton & Peabody. Mr. McCarthy said he was at the meeting on behalf of the Maine Headstart Directors' Association. The bill Chair Katz referred to is LD 568 and the Education Committee will be working the bill that afternoon. It is a concept draft regarding unifying the systems talked about at this meeting. He did not know what form it currently takes or if there is a proposal to do a study.

Chair Katz asked Director Ashcroft to check on the timeframe of LD 568 so OPEGA's work will be of help to them.

OPEGA will monitor the bill, and if it is a study, the time line. The work in Question 3 is structured so OPEGA could potentially be in a position to share its findings with the GOC and the study committee prior to getting the full review done.

Rep. Fossel's concern is there are many overlapping boards with each having their own constituency which makes it difficult to determine who is responsible for what. He hopes OPEGA will review what a reasonable model for providing the services with clear lines of authority with neither duplications nor gaps.

Director Ashcroft said that is OPEGA's view in question 3.

Sen. McCormick asked if OPEGA's work would involve the different funding sources – Departments of Education and Health and Human Services.

Under Question 2 OPEGA is looking to not only take apart the funding, but understand where it is going, and what could be used to pay what. The Director believes it is an area they talked about as opportunities to reduce costs in the CDS program and having more billed to MaineCare or private insurance.

Director Ashcroft said this is the point in the review process for the GOC to add or change any questions on OPEGA's Recommendation for Project Direction.

Rep. Fossel's concerns regarding gaps and duplications will be added.

Rep. Fitzpatrick was interested in the funding mechanisms, with federal and state money being received, if it could be delineated as to where it was coming from, and if they are receiving duplicative payments.

Director Ashcroft hopes they will be able to trace the trail of any funding streams.

Rep. Boland would like to know, if possible, how easy it is for outside people to use the computer program systems set up for these services.

Director Ashcroft is not sure that OPEGA will be looking at the program from the providers' perspective in terms of efficiency unless the GOC would like them to do that. Staff will keep that in mind, but as the scope is structured they will be looking at the efficiency of the CDS resources.

Chair Katz asked if there was objection to taking an item out of order. Hearing none, the Committee moved to **Discussion on Continuing Project on BETR, BETE and TIF.**

- **Discussion on Continuing Project on BETR, BETE and TIF**

Director Ashcroft had reported that this project would take more time than what was originally believed and was checking back with the Committee for a decision of whether they wanted OPEGA to pursue the topic. If OPEGA pursues CDS, Cost Per Prisoner, and Maine Green Energy Alliance, and concludes the Health Care Services in the Correctional System review, they would not have a lot of time to spend on this topic, at least through the end of this calendar year. If the GOC would like to move forward on this, the Director would ask the Committee to prioritize the topics.

The GOC agreed to take no action on the project at this meeting and it will be added to a future GOC agenda.

REPORT FROM OPEGA DIRECTOR

- **Status of OPEGA's Vacant Analyst Position**

First interviews and testing have been conducted and deciding who to ask back for a second interview.

- **Project Status Report**

Director Ashcroft summarized the status of OPEGA's projects.

Health Care Services in the Correctional System – OPEGA is in the process of planning what additional work it may want to do to complete the review.

Chair Katz wanted to make sure that the GOC/OPEGA's work is completed before the DOC finishes developing its' RFP.

Director Ashcroft said DOC's RFP had been delayed, but she will contact Ruth Lawson-Stoppa, DOC's Director of Health Care Services, to ascertain the status of the RFP. She noted that the DOC has the information needed from OPEGA for the RFP as that information was contained in OPEGA's Information Brief of Health Care Services in State Correctional Facilities.

Certificate of Need – OPEGA has completed the work required to address the GOC’s initial questions of focus and is waiting for further Committee direction.

Child Development Services, and **BETR, BETE and TIF** were discussed earlier in the meeting.

Governor’s Training Initiative is still on OPEGA’s Work Plan even though the program has been discontinued because the GOC has not taken any action to vote it off OPEGA’s Work Plan or On Deck list.

Cost Per Prisoner in the Department of Corrections is discussed below.

Director Ashcroft referred the Committee to the Recommendation for Project Direction.

The Government Oversight Committee had previously expressed interest in understanding why Maine ranked 7th highest for cost per prisoner when compared to other states. OPEGA’s preliminary research into the source of that statistic revealed that gaining a meaningful understanding of Maine compared to other states would require a structured survey of other states and Maine to obtain cost detail. She understands that the Criminal Justice and Public Safety (CJPS) Committee has recently asked MDOC to gather that information and conduct the appropriate analysis.

An OPEGA review focused on the following sets of questions would avoid duplicating MDOC’s efforts while providing the Legislature with additional insight into Maine’s correctional costs. A possible result of addressing these questions would be identified opportunities to reduce or contain future costs.

1. What portion of MDOC centralized administrative costs are related to managing inmates in the State correctional system (including upper management, IT and DAFS Service Center Support)?
2. What is the cost per prisoner for State inmates? What are the primary categories of costs associated with State inmates (adult and juvenile)? What are the trends in those costs, and the cost per prisoner, over time?
3. What are the primary drivers of high cost or increasing cost categories? What efforts has MDOC made to contain those costs? What are the outcomes of their efforts, and what barriers or challenges have they encountered?
4. How do costs and cost per prisoner compare among State correctional facilities? What are the reasons for any significant variations?

Director Ashcroft said that at the last meeting Chair Burns indicated the CJPS Committee had asked DOC to undertake a survey and although she has not talked with the Commissioner to know if there is some other plan, she spoke with Director Ferguson and it is her understanding that it does not appear that the Department is planning to do the kind of structured survey to all the States that she was envisioning the GOC was asking for.

Chair Burns said the subject constantly comes up and they are always being told that Maine is in the top percentile for expenses. The CJPS Committee had an economist compare Maine apples-to-apples with other States regarding the costs per prisoner and put Maine at number 2 for the highest cost per prisoner. The Legislature needs to have the information of where Maine compares to other States. He suggested to Commissioner Ponte at a GOC meeting that this type of a survey be done through DOC because the Commissioner knows the system, how to compare apples-to-apples, and his expertise will be valuable in whatever the GOC decides to do.

Chair Katz asked how much additional work it would be for the OPEGA staff to add that as a question to this project direction.

Director Ashcroft said it would require knowing what data they wanted to capture in the survey, send it out, and receive it back. It would be self-reported so the bulk of the time is trying to understand the differences identified to make sure the comparison is similar. It also depends on how responsive the other states are in completing and returning the surveys.

Chair Katz recognized Director Ferguson.

Director Ferguson referred to a report from a survey that DOC had conducted at the direction of Commissioner Ponte and distributed at the May 5th GOC meeting. He had offered to solicit all the States in the Nation, but the Commissioner did not feel that was necessary. DOC solicited Rhode Island, New Hampshire, Vermont and New York and broke it out by maximum, minimum and medium facilities. Maine falls in the middle, if not lower, than these states it was compared to. The average cost per prisoner is \$43,000 a day. The report also indicates that on a percentage of use of General Fund dollars, Maine is the 5th least in the Nation. If they have a capital cost that is 7th or 2nd highest in the nation, then how could you be the 5th or 6th lowest in use of the General Fund dollars nationally? He believes that is a statistic worth considering. Of the maximum security facilities in Maine, New York and Rhode Island, Maine is in the middle. For medium security facilities Maine is also in the middle and for medium/minimum security facilities Maine is actually lower than the other states they looked at. DOC put together criteria for each state to fill out because not every state fills out the survey the same way. In Maine, juveniles are part of the equation and in a lot of other states, juveniles are in Child and Family Services so that statistic may not bear out in the survey. When DOC sent its survey out they were very specific on what they were looking for. If you compare Maine to New Hampshire it is not a good comparison because they have a 2,800 bed facility which accommodates most of their prisoners and Maine has 6 facilities spread over the State. If you think of the economy of scale of having 1 large facility and 1 cooking staff versus 6, that is where the problem starts to manifest itself. Short of building a 3,000 bed facility in Maine, it is going to be very difficult to drive those costs down. Mr. Ferguson said the Correction Department's budget is 67% personnel services, 27% contractual and the rest is commodities. Director Ferguson knows Commissioner Ponte is reviewing staffing and preparing a staffing plan to reduce overtime, and in Director Ferguson's opinion, overtime is a big cost.

Chair Burns thinks there are two separate issues. The first is comparing apples-to-apples, comparing Maine to comparable states that have comparable systems, and the juvenile aspect should be separated from the adult prisoners. He wants to know how Maine is doing along side the other states. Secondly, as Commissioner Ponte is currently working on, he wants to know how to be more efficient. Chair Burns believes it is to be the job of the CJPS Committee and DOC to review this, but he does not think they can get to that point until there is something to compare Maine to. It is not beneficial to compare two New England States that have a completely different type of system, population and facility.

Director Ferguson said DOC created the survey template to capture information for adults only, asking specific questions so that it was apples-to-apples. There is no sense doing a survey if it is not going to be that way, the data would not be relevant.

Chair Burns thinks Rhode Island and New York would be completely different than the system in Maine.

Director Ferguson said they included New York to show economy of scale. Using a system that has 76,000 prisoners and comparing it to a State that only has 2,000 you would hope that their cost per prisoner would be lower because they are managing a lot more prisoners.

Chair Burns believes everybody understands that, but what he is looking for is a comparison with states that are similar to Maine in population and in the types of facilities.

Sen. McCormick said it was everyone's expectation that with the jail consolidation effort and the Oversight Board, that facilities would be better utilized, programs would be consolidated and better administered, and costs would be contained and reduced. He is not sure the Board has been offered enough time to show what they can do and the focus should be on supporting that Board's work in achieving reductions in costs. There were opportunities to house prisoners in different facilities, and that work is still in progress and could result in reduced costs at some point. He hopes the Report will be supportive and useful for the Oversight Board.

Director Ferguson agreed and the ability to house prisoners in county jails has helped.

Addressing Sen. McCormick's issue, Chair Burns wants to give DOC as much time as possible to do what they are doing, but they have been spending 95-98% of their time with county corrections and he would like to have a reasonable comparison of Maine to other states that are in the same dilemma, and separate out the juvenile population.

The GOC thanked Director Ferguson for answering their questions and providing the survey information.

OPEGA will check what has already been done, including reviewing the entire survey that has been done.

Director Ashcroft thinks Sen. McCormick's comments regarding the Oversight Board would be addressed in questions 2 and 3, and hopes OPEGA's work will be helpful to the Board.

Chair Burns suggested that Director Ashcroft talk with Commissioner Ponte because he would be helpful in whatever OPEGA pursues.

Following Committee discussion, a 5th question was added to the project direction.

5. How do Maine's costs compare to other states with similar demographics and corrections structures? What are the reasons for any significant variances?

Motion: That the Government Oversight Committee approves OPEGA's Recommendation for Project Direction on Cost Per Prisoner in the Department of Corrections with the 5th added question. (Motion by Sen. Katz, second by Rep. Burns, Passed unanimously 10-0.)

Motion: That the Government Oversight Committee approves OPEGA's Recommendation for Project Direction on the Child Development Services. (Motion by Sen. Katz, second by Rep. Fossel, Passed unanimously 10-0.)

SCHEDULE NEXT COMMITTEE MEETING

The next Government Oversight Committee meeting was scheduled for June 10, 2011 at 9:30 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 11:10 a.m. (Motion by Rep. Fossel, second by Rep. Boland, unanimous.)