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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Meeting Summary
March 25, 2011

CALL TO ORDER

The Chair, Senator Katz, called the Government Oversight Committee to order at 9:32 a.m. in the Burton Cross Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Bliss, and Sen. Trahan Joining the meeting in progress: Sen. McCormick and Sen. Craven Absent: Sen. Sullivan
Representatives:	Rep. Burns, Rep. Fitzpatrick, Rep. Fossel, Rep. Boland, and Rep. Lovejoy Absent: Rep. Pilon
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Wendy Cherubini, Senior Analyst, OPEGA Etta Begin, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	Joseph Ponte, Commissioner, Department of Corrections Patricia Barnhart, Warden, Maine State Prison Denise Lord, Deputy Commissioner, Department of Corrections Charlene Gamage, Director of Human Resources, Department of Corrections

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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NEW BUSINESS

- **Follow-up on OPEGA Report on Maine State Prison Management Issues**

Director Ashcroft summarized the issues and recommendations in OPEGA's Maine State Prison Management Issues Report and actions to date by the Department of Corrections (DOC), the Maine State Prison and OPEGA. She introduced individuals from DOC, Commissioner Ponte, Warden Barnhart, Deputy Commissioner Lord and Director Gamage.

When OPEGA issued the report in June 2009, the DOC agreed that OPEGA was correct in its assessment of what were likely issues at play in the Prison and offered to put forward a strategic action plan on their own to address the matters. DOC developed a plan, the GOC sent a letter to the Criminal Justice and Public Safety (CJPS) Committee asking it to perform strong oversight of the Department's implementation of its plan and make sure it progressed as needed. Director Ashcroft does not believe that the level of monitoring desired in terms of regularity or rigor has occurred, report backs have been sporadic and it has been unclear whether the actions the Department has taken were specifically making progress on the issues identified. OPEGA has continued to receive complaints and concerns from individuals familiar with the Prison that suggest there has not been a lot of progress made in terms of changing the culture, or even ferreting out the processes and avenues for reporting in the way the GOC/OPEGA had hoped. That is the reason that follow-up on this is before the GOC today.

DOC distributed an updated Strategic Action Plan to GOC members.

Chair Katz recognized the newly appointed Commissioner of DOC, Commissioner Ponte.

Commissioner Ponte said during his confirmation process he heard about OPEGA's Report on Maine State Prison and the cultural issues there. He introduced staff from the Prison attending the meeting to answer any questions the GOC may have - Officer Engstfeld, Officer Dube, Manager Rusty Worcester, and 3 Deputy Wardens Karen Carroll, Leida Dardis, and Jim O'Farrell.

Commissioner Ponte referred to OPEGA's Report completed in June, 2009 and said not much has been done with the recommendations or the Department's plan of action. Commissioner Ponte believes they now have the right team in place and a good plan in place. He informed the Warden they need to stop talking about things and get things done. The staff is waiting and ready for that leadership. He said Warden Barnhart has been in her position for about one year and there were matters that had to be addressed to establish a foundation before she started implementing the plan to change the culture. The Commissioner was not sure they needed to wait a year, but he is confident they now have a solid plan, that the plan will be implemented, and the employees of DOC will benefit from it.

Commissioner Ponte's responses to the GOC's questions and concerns included:

He is very supportive of culture surveys and used them in his previous warden positions to develop plans of action to correct staff perceptions or real issues. He says DOC is in a good position to get a survey done quickly now. The survey results can be shared with the Committee and the Warden will also develop a plan of action based on those results.

Commissioner Ponte said turnover in staff at the Prison is a large cost and morale issue. DOC has not had real data to look at, but are now gathering that data and will be able to then make a plan on how to retain employees. The Warden does do exit interviews and he will insist that every individual that leaves has a one-on-one with the Warden so she can get a feel for herself of what is going on. Some exit interviews have been conducted already and they are recording the data from those.

Members of the GOC had great concern that DOC had not acted on OPEGA's Report, issued in 2009, even though it contained conclusions about serious situations at the Prison. It leaves the impression that the Report has not been taken seriously whatsoever.

Commissioner Ponte thought the problem was that DOC did not formulate a good plan at the time the report was released. From his perspective some of the recommendations in the report could have been done much earlier than what they are proposing today. He also noted that Warden Barnhart had only been at the Prison since the end of 2009. She was learning about Corrections in Maine while also learning the position of Warden. It took some time for her to build a foundation for change. A push from the Central Office was also missing.

Chair Burns referred to the Board of Visitors and asked if they were being utilized to the fullest extent and if they were available to staff as well as the prison population. Commissioner Ponte said they are available to both. He has received a report from the Board and will make that report available to the GOC.

The GOC thanked Commissioner Ponte for attending the meeting.

Chair Katz said he appreciated receiving the Prison's Strategic Action Plan today, but in the future would appreciate receiving this information in advance of a meeting so he would have the opportunity to review it beforehand.

Briefing by Warden Barnhart

Warden Barnhart acknowledged that she was before the GOC over a year ago speaking of changes needed, but in order to implement change, she had to build some trust on all layers and levels, which she has been working to do. She described some changes that had been made including adjustments to 12 hour shifts, creating a dress code expectation, and establishing a nonsmoking policy. Over the past two weeks, the Warden has been meeting with staff on all shifts and held town hall meetings for staff at the Maine State Prison and Bolduc Correctional Facility to begin to get focused on other issues. A couple of employee committees have been created and they will be working toward workforce excellence.

The Warden acknowledges that, to date, they have not done very well in addressing the issues pointed out in OPEGA's Report. However, she believes they now have a much more defined plan that is realistic, obtainable and measurable that they are ready to deliver on.

Sen. Bliss noted that the most important thing he heard was when the Commissioner referred to OPEGA's Report and said there was nothing in the Report he disagreed with and asked the Warden if she shared the Commissioner's view. The Warden agreed with the Commissioner.

Chair Katz recognizes the Warden's difficult job, but asked why taking action on these issues had taken so long. Warden Barnhart had no excuse for not being further along in the action steps. She was hired in December, 2009 and felt she was not going to be able to make successful strides forward if people did not trust the work she was doing and she had been working on building that trust at all levels.

Chair Katz, on behalf of the GOC, thanked Warden Barnhart for answering their questions.

Sen. Bliss asked if any DOC staff at the meeting would like to address the Committee.

Chair Katz recognized Officer Engstfeld.

Officer Engstfeld has worked at the Prison for about 11 years. He is currently an instructor for the new recruits because he thinks more staff involvement in training, the hiring process, etc. is needed. He noted that retention can be difficult partly because working at a prison is a job some are just not cut out to do. People are hired and then realize the job is not for them. There are issues at the prison, but he thinks changes are being made. He has been treated fairly, but cannot speak for other staff.

The GOC thanked Officer Engstfeld for the information he provided.

Chair Katz asked the GOC what they would like for a report back from DOC. Following Committee discussion it was decided that the DOC would report back in June, 2011. Director Ashcroft will work with DOC to schedule that.

UNFINISHED BUSINESS

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

  - **Update on MTA Matters Regarding Responses to GOC Requests**

    Director Ashcroft reported that she continues to receive information from organizations and vendors regarding gift certificates and cards.

    Letters from the GOC were sent to individuals from MTA and Board members that sat during 2005-2007 asking them to attend the April 15th GOC meeting. Director Ashcroft reported that MTA staff and the three Board members will be at the meeting. Mr. Violette and his attorney have requested until March 31st to respond to whether he would voluntarily attend on April 15th.

    Chair Katz explained that Mr. Violette's attorney had a medical issue and had asked for additional time to respond on behalf of his client. Chair Katz noted that the GOC was not scheduled to meet again until April 8th, so he asked members for a motion to subpoena Mr. Violette in the event his attorney should indicate he will not voluntarily appear.

    Motion: That the Government Oversight Committee subpoena Mr. Violette to appear before the GOC on April 15, 2011. (Motion by Sen. Trahan, second by Chair Burns).

    It was requested that Sen. Craven be called for the vote. The Committee moved to the next item on the agenda until Sen. Craven arrived. Upon arrival of Senators McCormick and Craven to the meeting, Chair Katz reviewed Sen. Trahan's motion.

    Discussion: Rep. Boland was uncomfortable issuing a subpoena prior to knowing one would be needed. Chair Katz explained that the GOC does not meet again until April 8th. If Mr. Violette's attorney requested Mr. Violette be subpoenaed to the April 15th meeting there might not be time to do that.

    Rep. Lovejoy asked if a date should be added to the Motion and the Motion was amended to add March 31st.

    Motion: That the Government Oversight Committee subpoena Mr. Violette to appear before the GOC on April 15, 2011 if the GOC/OPEGA has not received a response from Mr. Violette or his attorney by March 31, 2011. (Motion by Sen. Trahan, second by Chair Burns, Passed 9-1).

  - **Update on GOC Letter to Transportation Committee**

    Chair Katz reminded the Committee of the letter they sent to the Transportation Committee suggesting areas they might want to continue to pursue, either by legislation or otherwise, from OPEGA's Report of MTA. Noting that the Transportation Committee is pursuing the GOC's suggestions and is considering legislation on the issues, the GOC agreed there was no further action for OPEGA/GOC to take at this time.

  - **Review and consideration of information received at March 11th meeting from MTA Bond Counsel and OPEGA survey of other quasi-State agencies**

    Director Ashcroft summarized what the GOC discussed in prior meetings of what action and/or information they had requested. OPEGA was to gather information from other quasi-State agencies regarding their policies and

practices for issues raised in the MTA Report. The Committee had also wanted to hear from the Attorney General's Office about whether MTA was permitted, allowed or prohibited in any way from hiring outside lobbyists and/or giving sponsorships and donations. The AG's Office has briefed the GOC on those issues.

Director Ashcroft made several observations from the briefing MTA Bond Counsel provided. There are certain types of expenses being paid for out of MTA's Reserve Maintenance Fund that OPEGA brought to the GOC's attention because they appeared to be typical operating expenses that are not getting in the operating budget for the Legislature's approval. MTA's explanation was there were certain expenses they felt were critical in order to stay in compliance with their bond resolution and they were choosing to pay for those out of Reserve Maintenance account partly, if not completely, because it would be risky to subject those to the Legislature's approval or disapproval. She understood Ms. Burke, MTA's Bond Counsel, to say that the expectation under the bond resolution was that core operating expenses, meaning things that are critical to running the Turnpike and maintaining it, should be paid out of the Revenue Fund. The bond holders expect the critical operating expenses to be the first things paid. Ms. Burke indicated that other types of expenses might be paid out of the Reserve Maintenance account. Director Ashcroft pointed this out because it appears that some of the expense items being included in the Reserve Maintenance budget, meet the criteria of things that are probably core operating expenses for the MTA, while other items appear to be non-core expenses. She would think that it should not have been a big deal if non-core expenses are subjected to legislative approval.

Director Ashcroft noted the inconsistency in what Ms. Burke described was the purpose of the different Funds, versus the explanation OPEGA received from MTA as to why they were putting things in the Reserve Maintenance Budget that is not subject to the Legislature's approval. The Director suggested there should be clear guidance and criteria or understanding, at the very least, between the Legislature and MTA as to what expenses are going to be paid out of which Fund, and what that means in terms of legislative approval of particular expenses.

Director Ashcroft thinks Ms. Burke also eluded to the fact that MTA's bond coverage ratio is affected by what gets paid for out of the Reserve Maintenance Fund versus the Revenue Fund. This is also very important to MTA. There are dual implications in deciding which Fund is used for what, both in terms of what the Legislature gets to approve and what makes sense for MTA's bond coverage situation. She thinks some analysis is needed to sort it out and would be happy to support the Transportation Committee in helping to understand those implications.

The GOC discussed further the implications the Director referred to. Rep. Lovejoy also described several changes in internal control and reporting avenues he thought MTA should consider adopting. The Committee considered whether it should issue specific directives to MTA in this regard. Chair Burns recommended the GOC's suggestions be put in writing and Chair Katz asked if Director Ashcroft could summarize in writing the suggestions that had been discussed. She will talk with Rep. Lovejoy and prepare a summary.

Chair Katz asked what, if anything, the GOC wanted to take for action with respect to the issues of outside lobbying, and the issues revolving around donations and contributions, that will not only apply to MTA, but to other quasi-State agencies.

The GOC discussed what should be included in the legislation the GOC would introduce that will be referred to the committees of jurisdiction and agreed the legislation should include expectations on contributions, donations and lobbying.

Following Committee discussion, Chair Burns asked if Director Ashcroft would work with the Revisor's Office and draft legislation the GOC could review at its next meeting.

Director Ashcroft asked for clarification of whether the GOC was suggesting donations to charitable organizations, such as the YMCA or American Cancer Foundation, should not be done at all or should be done under the criteria that it needs to be related to an agency's mission. Rep. Fossel suggested that donations to charitable organizations not be allowed at all. The Committee agreed that the initial draft of the legislation should be written that way.

The Director noted that the GOC, in an earlier meeting, discussed the policy regarding sole sourcing. OPEGA's survey of other quasi-State agencies did not include asking what their policies were regarding sole sourcing. She asked if the GOC wanted OPEGA to go back to the quasi-State agencies and find out about that.

The GOC asked OPEGA to gather that information and the Committee will revisit sole sourcing.

- **Further Consideration of Possible GOC Actions on OPEGA's Reported Issues and Recommendations**

Chair Katz recognized Interim Director Peter Mills and Roger Malar, MTA.

Director Mills referred to the GOC's earlier discussion and said MTA has language they would like to suggest in the drafting of a statewide policy on sponsorships and donations. He reported MTA had curtailed all donations, had cancelled its external lobbying contracts and is in the process of establishing ongoing policies. A criteria MTA has been using in reviewing memberships and sponsorships is whether the organization receives a tangible benefit for having participated.

In regard to implementing recommended changes to MTA's budget, MTA may not have 6 months to a year to do that because under current law it is to submit its budget to the Transportation Committee this spring. He will be meeting with MTA's financial staff and hoping to have some responsible proposals to be presented to the Legislature.

Mr. Malar reported that he has spent time with MTA's CFO and believes there is a clear way to identify the right expenditures that the Transportation Committee should look at, wants to look at, and will look at regardless of what bucket they go in. Based on that, he thinks they can overcome the transparency issues quickly.

Director Mills reported that MTA has begun handling the engineering work in house, particularly in the areas where they are constantly doing inspections on construction projects and their own people will do much more of that work than before. They are earnestly working to redefine their relationship to the engineering community and would hope to be able to report back to the GOC on those efforts.

Director Mills has researched the reporting structure of MTA and thinks there should be a financial person, whether it is an internal auditor, a risk assesser or the CFO, who cannot be fired by the Executive Director, and whose primary responsibility is to report directly to the Board in an unfiltered way. Presently that is not part of MTA's structure.

Sen. Bliss said, and members of the Committee agreed, that Director Mills was the perfect choice to fill the position of Executive Director of MTA at this time.

The Committee thanked Director Mills and Mr. Malar for the information provided.

STATUS REPORTS FROM DIRECTOR

- **Current Work in Progress**

Director Ashcroft reported that there has not been much change in the **Health Care Services in the Correctional System** topic since last meeting.

Regarding the four topics the GOC added to OPEGA's Work Plan she said:

Certificate of Need and **Child Development Services** topics are underway and OPEGA anticipates they will be able to provide something to the Committee in a timely manner. They are hoping to get Certificate of Need information to the Committee by the end of April and Director Ashcroft is assessing the time frame.

BETR, BETE and TIF – OPEGA is assessing where the information resides that would allow the Office to answer the three questions they were charged with – (1) what is the profile of the companies receiving the BETR and BETE benefits; (2) what kind of controls or processes are in place to make sure that only companies that are eligible for those benefits are getting them; and (3) how many companies are getting both BETR and TIF benefits, to what degree do those combined benefits exceed their tax liability and how many are out of state. OPEGA has learned there is not a lot of detailed information available at the State level on these Programs. Much of the information is at the municipal level and there are many OPEGA will have to contact in order to get the data necessary to address at least two of the questions. Question 2 can be addressed in a fairly reasonable time frame, but questions 1 and 3, she believes, would take well beyond the end of session. She also estimated that it would be a full review, 1,000-1,500 hours to complete, given the outreach that would be needed. Director Ashcroft was looking for further direction from the GOC.

Following GOC discussion it was decided to delay their decision on this topic until other Committee members were at the meeting.

Cost Per Prisoner - OPEGA is just getting started on the planning work and determining what information can be obtained at the national level in regard to that statistic. The plan is to work down from that as to how it relates or does not relate to Maine's costs.

Governor's Training Initiative is in flux right now with the GOC determining whether they want OPEGA to move forward, and if not, to vote to move it off the Work Plan.

- **OPEGA Budget**

Director Ashcroft provided OPEGA's budget information to the GOC for review, but it was not discussed.

- **Update on Legislation Impacting OPEGA**

- LD 306, Resolve, Directing the Office Program Evaluation and Government Accountability to Make Recommendations to Find Efficiencies in Per-pupil Costs Associated With Interscholastic Activities.

  The public hearing was held March 24th and although Director Ashcroft could not attend the hearing she did, as the GOC had requested, send her testimony to the Education and Cultural Affairs Committee prior to the public hearing. She also believes Sen. Katz's testimony was forwarded to the Education Committee.

  Rep. Lovejoy, a member of the Education Committee, reported that Committee was not going to ask OPEGA to make recommendations as required in LD 306 and are instead going to look at putting together a work group to review some of the issues.

- LD 806, An Act to Provide Public Access to Price Lists of Hospitals and Ambulatory Surgical Facilities has not yet been scheduled for public hearing.

NEXT GOC MEETING DATE

April 8, 2011, 9:30 a.m.

ADJOURNMENT

The Government Oversight Committee meeting was adjourned at 11:22 a.m. (Motion by Rep. Fossel, second Rep. Lovejoy, unanimous).