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REP. DAWN HILL, CHAIR

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SEN. JOSEPH C. BRANNIGAN  
SEN. BILL DIAMOND  
SEN. EARLE L. MCCORMICK  
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REP. MARGARET R. ROTUNDO

**MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY**

**May 22, 2009**

**Accepted June 30, 2009**

**CALL TO ORDER**

The Chair, Rep. Hill, called the Government Oversight Committee to order at 9:35 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators:	Sen. Brannigan, Sen. Nass, and Sen. McCormick Joining the meeting in progress: Sen. Simpson Absent: Sen. Diamond and Sen. Trahan
Representatives:	Rep. Hill, Rep. McLeod, Rep. Pendleton, Rep. Burns, and Rep. Bickford Absent: Rep. Rotundo
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Jennifer Reichenbach, Principal Analyst, OPEGA Etta Begin, Adm. Secretary, OPEGA  Senator Stanley Gerzofsky, Chair, Criminal Justice and Public Safety Joint Standing Committee
Executive Branch Officers and Staff Providing Information to the Committee:	Edward Karass, State Controller Ruth Quirion, Director of Financial Reporting and Internal Audit, Office of the State Controller Shirley Brown, Audit Analyst, Financial Reporting and Internal Audit, Office of the State Controller Marty Magnusson, Commissioner, Department of Corrections Scott Ferguson, Director, Department of Corrections' Service Center Andy Cook, Medical Director of Children's Behavioral Health Services, Dept. of Health and Human Services

**INTRODUCTION OF THE GOVERNMENT OVERSIGHT COMMITTEE**

Members of the Government Oversight Committee introduced themselves for the benefits of the listening audience.

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## SUMMARY OF THE MAY 8, 2009 MEETING

**Motion:** That the Meeting Summary of May 8, 2009 be accepted as written. (Motion by Sen. Nass, second by Rep. McLeod, PASSED by unanimous vote).

Chair Hill asked if there was objection to taking an item out of order. Hearing none, she moved to **Unfinished Business, Maine State Prison Matters.**

### UNFINISHED BUSINESS

Director Ashcroft introduced State Controller Karass to brief the GOC on the results of the review on the Cars Behind Bars Program at the Maine State Prison.

- **Maine State Prison Matters**

- **Cars Behind Bars Program at the Maine State Prison – Presentation by State Controller Karass of the Controller's Office**

Controller Karass introduced Director Quirion, and Shirley Browne, the Principal Analyst on the review. The review on the Cars Behind Bars Program began in October, 2008 at the request of Commissioner Magnusson. The Commissioner had concerns regarding mismanagement of the program. The review concluded April 22, 2009. Copies of the State Controller's report on the Review of the Maine State Prison's Auto Repair and Restoration Technical Programs dated April 22, 2009 and a Summary of the Programs Presented to the GOC on May 22, 2009 was distributed to the GOC.

Director Quirion said they had concluded that there is a significant lack of internal controls over the Maine State Prison's vehicle repair and restoration technical programs. Internal control policies and procedures are necessary in order to safeguard the State's assets and to prevent fraud and abusive practices. Evidence of malfeasance was not found during the review, but the lack of checks and balances over the operation of the Prison's auto repair and restoration technical programs would make it difficult to detect theft or abuse.

Director Quirion briefed the Committee on the Controller's Office Recommendations to the Department of Corrections and the Department of Administrative and Financial Services Corrections Service Center. These included:

- Development and implementation of written policies and procedures over the repair and restoration educational programs including the Saving Cars Behind Bars Program to assure an internal control system is in place and consistent rules and procedures are followed.
- Immediate establishment of a policy prohibiting Department employees from using the Prison technical and industries programs in order to prevent the potential for abuse and misuse of the services provided through these programs or, at a minimum, establish policies and procedures to ensure that all that all customers of these programs are treated fairly and equitably and all business is conducted in an arms length manner with appropriate controls and recordkeeping.
- Implementation of a standard costing system and schedule of charges to ensure that all costs are covered and all customers pay a fair market rate for the service keeping in mind it is a technical training program.
- Implementation of a work order system to adequately account for appointments, work to be conducted by the programs, the purchase and application of parts related to a service request, and the labor and other overhead costs that should be applied.

- Immediate measures to exercise the appropriate supervisory review and ensure that staff is adequately trained to appropriately record the financial transactions they are entrusted with each day.
- Development of procedures to ensure that program activity will only be charged to the appropriate fund and appropriate units.
- Development of appropriate agreements and execution of those agreements with all person(s) buying and selling vehicles or parts, or making donations to the Saving Cars Behind Bars Program.

Director Quirion said the Department of Corrections has been very receptive to the recommendations, are planning to implement them and have provided a timeline for doing so. The Department will however need time to develop a full corrective action plan.

The Government Oversight Committee members' concerns and questions included the following:

GOC: Rep. McLeod referred to the 1970 Dodge Coronet Convertible Clone with total expenses of \$50,076 in the Saving Cars Behind Bars Program and thinks it is a large amount of money to put in such a vehicle and asked if the money came out of a special account.

A: Director Quirion said the money comes out of a special revenue fund that is used to account for the Prison's technical program.

Director Quirion said part of the problem was a lack of oversight from the Finance Department responsible to assist the Program staff. The Program Manager kept track of the cost manually, and some costs were missed. The Manager totaled expenses at approximately \$30,000 and when the Controller's Office reviewed the detail of the expenditures, it was actually \$50,000. She said the Manager was not provided the financial oversight and guidance he should have received.

GOC: Sen. Nass asked if they had audited both the Automobile Repair Program and the Restoration Program, and if the inmates working in them got paid.

A: Director Quirion said both Programs were audited and inmates do not get paid for their work. It is technical training. The Director said they could not find a written agreement in place, however, there was a verbal agreement that Central Fleet would pay a labor fee on the Central Fleet vehicles that were worked on to help fund the overhead.

GOC: Rep. Burns said there is great opportunity for misuse or something worse, in the current structure of the Programs. He asked if there was any documentation on the number of employee cars that were restored.

A: Director Quirion said there was no documentation available to show what work may have been done on employees' vehicles. However, they did look at expenditure detail in the accounting system for automobile parts vendors and were able to trace the transactions to one of the vehicles listed in the report. The Controller's Office looked at the Department of Correction's Special Revenue Account and did not find any parts being charged inappropriately to the State account. They also reviewed some activity in the General Fund related to Purchasing Card transactions and did identify some parts charged to the General Fund that should have been charged to the Special Revenue Account.

GOC: Rep. Burns asked if there was documentation that employees brought their own vehicle replacement parts for work they had done at the Prison.

A: Controller Karass said all they can track is what the State's outlay was for any parts purchased at the local auto parts store, and as Director Quirion and Ms. Browne indicated, they did trace those purchases back to the cars that are referred to in their Report.

GOC: Sen. Brannigan asked which State Service Center the Prison came under.

A: Controller Karass said it's the Corrections Service Center which is run by DAFS.

GOC: Several GOC members raised concern about the lack of documentation and the structure of the Programs.

A: Controller Karass said there is also an issue of personal gain when employees use these programs, especially looking at the restoration of vehicles. Although the employee purchases the parts, he/she escapes a large percentage of the cost of restoration which is labor. When the vehicle is sold for a gain, there is then an ethical issue of escaping capital gains. The other concern is that when the Program is made available to an employee that creates a taxable fringe benefit for the employee. Under reporting of the employee's fringe benefits occurs, in addition to the ethical and appearance issues.

The Controller's Office has pledged to the Commissioner that as he works through the problems, they will be there to help.

GOC: Rep. Burns raised the issue of the cost and maintenance of the tools purchased for the Programs.

A: Controller Karass said his office did address those issues in the detailed report, especially infrastructure and equipment. To run a garage facility it does take a certain baseline investment and in order to keep the program viable there has to be cash to continually re-invest in the program.

The Government Oversight Committee thanked State Controller Karass and his staff for the information provided.

Chair Hill recognized Commissioner Marty Magnusson.

Commissioner Magnusson introduced Director Scott Ferguson of the DAFS Corrections Service Center. The Commissioner said the Auto Repair and Restoration Technical Programs are two worthwhile and important vocational education programs for inmates, but that he was doing away with the Saving Cars Behind Bars Program. The Prison would like to keep the auto body and mechanic repair programs and is proposing that they be open to the public and staff equally as it used to be, and both paying the same price. The Prison needs to set up a way to audit these Programs to ensure they are functioning as planned. They would also like to do more public restitution with these programs and have begun working on fire trucks and other municipal vehicles. If the public and staff were not allowed to use the services the Prison would lose the Programs.

Commissioner Magnusson explained that inmates were not paid to work in the Programs because it is a vocational program and when inmates complete the Program they are eligible for work release and can earn money from the skills they have learned. Inmates are being taught a valuable skill, but unlike others who train in vocational schools, they are not paying to earn the skill.

Commissioner Magnusson said the Controller's audit revealed issues he was not aware of and thanked them for their help. Prison staff are taking the issues seriously and are working with the Commissioner and his staff to develop a corrective action plan. He said the financial staff are both within the Service Center and within his Department so part of the corrective plan is how they coordinate the changes.

The Committee's questions were as follows:

GOC: Chair Hill asked if there was a timeline for the Department's corrective action.

A: Director Ferguson referred the GOC to the Timeline chart in the information provided to them by the State Controller's Office. Corrections' Service Center has a team that will be visiting each facility, working with the Department and Service Center personnel at each facility to review all programs, policies, forms, and procedures.

GOC: Chair Hill asked when the Cars Behind Bars Program was done away with, and the status of the \$50,000 vehicle that had been restored.

A: Commissioner Magnusson said it closed about two weeks ago and they are working with the Department of Audit to make sure they follow the correct procedure to put the vehicle back on eBay. The sale of that vehicle will be the end for that Program. We found in the audit that there are just too many issues to keep working with it.

GOC: Rep. Burns asked if the Commissioner was also looking at the similar programs in its other facilities.

A: Commissioner Magnusson said the Corrective Action Plan included every facility in the Department of Corrections.

GOC: Sen. McCormick said he did not think the Cars Behind Bars Program should have been closed. The actual dollar amount lost by the \$50,000 vehicle over the last 4 years, considering the learning experience over that time, does not seem that significant compared to similar high school programs.

GOC: Chair Hill asked for clarification of looking at all programs and asked if it is all restoration programs or included, for example, the wood industry.

A: Commissioner Magnusson said they are looking at all the programs where there is accounting and where employees may be accessing the program to make sure that it is equitable.

GOC: Chair Hill asked what the Department had for liability coverage if someone got injured or killed as a result of a repair that was done by an inmate.

A: Commissioner Magnusson said they used to have the person having the work done sign a waiver and to make it very clear that it is a school program. He will be asking the Attorney General's Office to review that agreement to see if it is sufficient.

The Government Oversight Committee thanked Commissioner Magnusson and Director Ferguson.

Chair Hill recognized Sen. Stanley Gerzofsky, Chair, Criminal Justice and Public Safety (CJPS) Committee.

Sen. Gerzofsky said he appreciated the work the GOC was doing and its thoroughness. He urged the Committee to remember inmates need training programs so when released from prison they have a trade and a better opportunity to obtain employment. Legislation has been introduced over the last two sessions that have helped reduce the costs of the industry programs. The CJPS Committee also supported a bill to make the programs less of a burden on taxpayers and more self-sufficient.

Chair Hill asked Sen. Gerzofsky if the CJPS Committee was meeting during the interim and could join with the GOC in tracking the Department of Corrections' Action Plan and asking for follow-up reports from the Department. Sen. Gerzofsky said the Committee would be meeting.

The GOC thanked Sen. Gerzofsky.

### **- Follow-up to OPEGA Project Direction Recommendations Statement on Maine State Prison Management Issues**

Director Ashcroft reminded the GOC that at its last meeting OPEGA presented its Project Direction Recommendation regarding some cultural issues and the Committee voted to pursue having the Department address OPEGA's recommended questions through proposed cultural change efforts. She was given the task of working with Commissioner Magnusson and the CJPS Committee to work out the details and referred the GOC members to the document in their materials called Draft Action Plan for "Second Option" Described in OPEGA's Project Direction Recommendation Statement Submitted to the GOC on 5-8-09. The Plan includes:

- GOC will send OPEGA's report with a letter describing its concerns to the CJPS Committee and will ask for a report back from CJPS Committee to the GOC by January 31, 2010.
- Prior to June 17, 2009, the CJPS Committee will meet with the Commissioner of the Department of Corrections to review the Commissioner's action plan. The CJPS Committee will establish a schedule and format by which to receive briefings from the Commissioner on the status of the action items and the resulting changes being experienced at the Maine State Prison.
- By January 31, 2010, the CJPS Committee will report back to the GOC on its oversight activities, its assessment of the Department's progress in completing its action plan, and its assessment of whether the Department has effectively addressed the questions OPEGA posed and made improvements that had been identified as a result of addressing those questions.
- On behalf of the GOC, OPEGA will stay abreast of the Commissioner's briefings and reports to the CJPS Committee and any actions taken by that Committee as a result. OPEGA will provide updates on those activities to the GOC as requested. OPEGA will also be available to consult with the CJPS Committee or its OPLA analyst, as requested by that Committee, to support its oversight of this matter and the subsequent report back to the GOC. OPEGA will be available to the Department if it has questions about whether actions planned or taken are addressing the questions OPEGA recommended should be explored.

Director Ashcroft believes the above could be a model for involving the policy committees in monitoring implementation of OPEGA's recommendations.

Director Ashcroft said that to finalize this part of the review, OPEGA would put the written material presented to the GOC at its last meeting into a formal report and include the Action Plan. It would give the work more formality to pass on to the CJPS Committee and would help OPEGA close out the project. She was seeking direction from the GOC as to whether they wanted her to present the original document back to the Committee and go through a public presentation again or whether they could just consider it final and make it public when it was printed.

GOC: Sen. Nass agreed with Director Ashcroft's suggestion regarding the report but asked about a couple of items from the last meeting that had not yet been addressed. First, there was the reoccurring reporting of the death that happened in 1988 and it was suggested that Lt. Wright might issue a closure letter. Sen. Nass asked whether that letter would be made public. Second, there was discussion about the problem with union representation potentially being unwilling to support an employee filing a grievance and asked if OPEGA was going to move forward with the culture examination.

A: Director Ashcroft said back in 2004 the Attorney General's Office had reviewed the inmate death and Deputy Attorney General William Stokes had written a letter at that time. He had told Director Ashcroft that the letter could be issued publicly and she would get that to the GOC at the very least. She believes the issue around the union representation goes along with the culture piece that the Commissioner's strategic action plan is going to be designed to address. She suggests that OPEGA not do any further work with that until DOC has completed its action plan. If appropriate at some later time, the GOC may want to consider that piece again.

GOC: Sen. Nass asked if Director Ashcroft had reviewed the American Corrections Association accreditation regarding the Maine State Prison that Commissioner Magnusson has referred to several times stating that the Prison received one of the highest scores ever given.

A: Director Ashcroft said OPEGA has looked at the report, has seen the standards and has that information available, but has not tried to validate the Commissioner's comment of how the Prison score compares to others.

GOC: Sen. Nass said the GOC has an oversight role and asked if the Committee would want OPEGA to validate the accreditation report.

A: Director Ashcroft said the Maine State Prison is up for reaccreditation this fall and will be going through that process again. She suggested that rather than have OPEGA go back to look at what had been done 3 years ago, the GOC may be more interested in what the Prison's current results will be in the fall.

GOC: Sen. Simpson asked what had happened with OPEGA's suggestion of hiring a consulting with background in organizational culture in prisons.

A: Director Ashcroft said that was Option 1 for addressing OPEGA's Recommendation and the GOC voted to pursue Option 2, which is to have the Department take the reins and continue with their culture change efforts in a more strategic manner. Part of their plan is to bring in an outside expert to work with them. They are proceeding the same way OPEGA would have if we continued.

GOC: Chair Hill said the cultural piece continues to be a concern and would like that information before the GOC closes this review.

A: Director Ashcroft said the accreditation process is not what the Commissioner is relying on to help change the culture. The Commissioner laid out, and there has been multiple discussions about, a number of action items they will be sharing with the CJPS Committee with timelines associated with them. One of those actions involves bringing in the outside consultant to work first with the management team and then down through the layers.

Director Ashcroft said if the GOC had no concerns with the process she outlined above, she will change the format of the documents presented at the May 8, 2009 GOC meeting, add in the action item and will draft a letter from the GOC Chairs to the CJPS Committee expressing the GOC's desire for them to oversee and report back in January, 2010.

**Motion:** That the Government Oversight Committee accepts Director Ashcroft's preliminary plan for the Report format and distribute the Report to the Criminal Justice and Public Safety Committee. (Motion by Sen. Nass, second Sen. Brannigan, PASSED, unanimous, 8-0).

## **OPEGA FINAL REPORT**

### **• MaineCare Children's Outpatient Mental Health Services**

#### **- Committee Work Session on Report Recommendations**

Director Ashcroft reminded the GOC that at the March 27, 2009 meeting the Committee had discussion around Recommendation 1, More Detailed Review of the Contract With APS Would be Prudent, including discussion with Brenda Harvey, Commissioner of DHHS. The GOC had asked OPEGA for a more detailed description of what it was envisioning such a review would include. Director Ashcroft referred the GOC to

the information in their notebook outlining, in detail, what the objectives might be of an audit like that, noting that not all of the objectives would likely be included.

Director Ashcroft said the Committee had also previously discussed Recommendation 2 and the GOC was attempting to decide what to do with this particular recommendation. That recommendation is about the proactive monitoring of changes occurring in the provider network as a result of some of the cost savings initiatives that were being instituted by the State. The purpose of the monitoring is to make sure that if any quality or access issues for clients emerge, that those would get addressed more proactively than reactively. OPEGA had suggested several bodies that might be appropriate for doing this monitoring and Commissioner Harvey listed a few other existing ones that might be possibilities. OPEGA has gathered information about a number of these bodies.

GOC: Chair Simpson asked if the Health and Human Services (HHS) Committee should be overseeing implementation of the recommendations rather than the GOC.

A: Director Ashcroft said that may be a good approach for Report Recommendation 2 – Outpatient Provider Network Needs Ongoing Monitoring as well as Recommendation 3 – Continued Need for Children’s Mental Health Oversight Committee Should be Determined. She noted that OPEGA has quite a bit of information it can pass on to the HHS Committee that brings more detail and context around the subject and the HHS Committee would be in a better position to understand what all the oversight boards are trying to do. HHS Committee might be in the better position to decide if the recommendation makes sense and do they need to implement it.

GOC: Chair Simpson asked if the Director would suggest forwarding the report to the HHS Committee in a more formal way outlining all the recommendations and what the GOC wanted HHS Committee to do with them.

A: Director Ashcroft said the GOC had asked her to draft a letter to the HHS Committee asking for an opportunity to present to them. She said that letter has not yet been drafted because the GOC had not met and decided what it wanted to do with the recommendations. That letter could now be written and include the extra detail of what the GOC is looking for. She said the GOC would have to decide if they would request a report back from HHS Committee.

GOC: Sen. Brannigan said the HHS Committee’s work for this session is done and did not know when it would be meeting again. He noted that APS does adults as well as children and would need to be considered as a whole. He referred to a number of complex matters the HHS Committee was supposed to be reviewing, but at this point, he did not know whether the Council would approve any interim meetings. Sen. Brannigan suggested that during the interim, work be done through the Committee’s staff and Chairs.

GOC: Chair Simpson said there could be a follow-up in January after sending the letter now.

A: Director Ashcroft clarified the GOC’s plan of action. A letter will be sent to HHS Committee regarding Recommendations 2 and 3, asking the Committee to make the determination on whether or not to implement the Recommendations. The letter would request that they report back to the GOC on actions they take so OPEGA can close out the follow-up with regard to those Recommendations.

**Motion:** That the Government Oversight Committee send a letter to the Health and Human Services Committee detailing the MaineCare Children’s Outpatient Mental Health Services Report Recommendations 2 and 3 and ask for their reply. (Motion by Sen. Nass, second by Rep. Bickford, PASSED, unanimous, 9-0).

The GOC moved to considering Recommendation 1 – A More Detailed Review of the Contract With APS Would be Prudent. At a previous meeting there was discussion about what the Department was already doing in regards to monitoring the contract and OPEGA was asked to provide more detail about what it envisioned



the recommended review would cover. The Director referred the Committee to the material she had prepared listing objectives that might be included in an independent review. Those objectives fall within four basic categories:

- Contract administration;
- Contractor Performance;
- Administrative Efficiencies; and
- Cost-Benefit.

She noted that a review may not encompass all of the items listed above. The discussion at the last GOC meeting included whether DHHS is already looking at some of the items listed and could report their findings back to the GOC as opposed to assigning a review to OPEGA. Director Ashcroft said the possibilities at this point are:

- Decide if OPEGA, or someone, should do an independent review at some time in the future. If the GOC wants it to be OPEGA, they could vote it "On Deck" and at some future point consider it as a possible addition to OPEGA's Work Plan.
- Communicate to DHHS what the GOC or the HHS Committee would like information back from the Department about how they are doing some of those things.

GOC: Sen. Brannigan said this is a small piece of a big operation and asked Director Ashcroft what directed the GOC to get to this point.

A: Director Ashcroft explained how OPEGA reached its Recommendation. The State decided to implement a managed care type situation, doing it through a third party provider that is referred to as the Administrative Service Organization, and the Department has contracted with APS Healthcare to provide that. Savings were supposed to be associated with this that had already been booked in the budget. Part of the question is whether the State is realizing the savings and all the other benefits it expected to get out of doing that and is the contractor performing as expected? OPEGA does not know if there are any problems, it is a prudence thing. The question for the GOC is do you want an outside independent review to answer some of those questions, in which case, it would be OPEGA or someone else. The review would independently verify that the Department is doing proper administration of the contract, that the billings are accurate, and that the contractor is performing as expected. An alternative discussed was to ask DHHS to conduct some of this work or to report back on how they were doing some of these things.

GOC: Sen. Nass said the Administration often claims savings they do not get and he would support OPEGA moving ahead to find out whether those savings have been realized.

A: Director Ashcroft said at the previous GOC meeting, Commissioner Harvey discussed the report on savings that they had given to the Appropriations Committee. OPEGA has seen the analysis that was done and DHHS can show savings in the MaineCare Program, but not equal to what was claimed. Also those savings can't be directly attributed to the work this contractor is doing. She said that even if the larger level of savings cannot be tied back to the contractor, DHHS expressed to OPEGA two ways in which they hoped the work of the contractor would change providers' behavior and decisions about the way they provided treatment that could logically be thought to save money. The State is paying approximately \$5 million to the contractor a year. OPEGA believes it would be prudent to audit and make sure they are achieving the benefits the State expected from them in this role. DHHS reported on the savings they achieved on the initiative overall, but OPEGA said that cannot be tied directly to this contract. OPEGA is suggesting that we should be looking at the next level down for the benefits being derived from this specific activity.

GOC: Chair Simpson wanted DHHS to be allowed to comment before the GOC decided how it would proceed with Recommendation 1. Chair Simpson recognized Andy Cook, Medical Director of Children's Behavioral Health Services in the Office of Family Services at DHHS.

A: Director Cook said Director Ashcroft's statement that an audit be done is an excellent suggestion, but thinks there is a mandated audit already in the enabling legislation for the APS contract. He is not certain if all of the objectives specified by OPEGA are in the audit, but sees little reason to duplicate. He said Children's Behavioral Health has always achieved their booked savings, and in fact have exceeded them over the past year. Director Cook said they have been monitoring two of their programs, Case Management and Home and Community Treatment for the past 8 years and the findings have been very important in terms of policy. They deleted 2 programs that were ineffective and put in 1 home and community treatment that has been found to be very effective and achieved substantial savings at the same time.

Director Cook said the Department is about to embark on a sophisticated computerized data collection youth outcome questionnaire which is going to be piloted with the home and community treatment program to make sure it is working, then will be expanded to collect information on the rest of outpatient services.

The GOC's comments and questions included:

GOC: Chair Hill asked about the auditing being arranged and if it was presently underway.

A: Director Cook said it is in the legislation or the rule that the Administrative Services Organization is a part of that there be an audit, but he did not know if one was currently underway.

GOC: Chair Hill said she would be interested in receiving the following information:

1. is the audit in progress;
2. who is the independent contractor;
3. who has contracted with them to do the work; and
4. does it cover all of APS versus just the children's portion.

Q: Director Ashcroft asked if Director Cook could tell them where in the statute the requirement of an audit is listed.

A: Director Cook said he will ask his staff to get the requested information together.

GOC: Sen. Nass said the GOC needs to decide whether to move forward or to wait until it receives the requested information from DHHS so they will not be duplicating the work that is or will be done.

**Motion:** That the Government Oversight Committee table its action on OPEGA's Recommendation 1 in the MaineCare Children's Outpatient Mental Health Services Report until the Committee receives the requested information from DHHS. (Motion by Sen. Nass, second by Chair Hill, PASSED, unanimous, 8-0).

The GOC thanked Director Cook for attending the meeting and answering the Committee's questions.

## **NEW BUSINESS**

None.

## UNFINISHED BUSINESS con't

### • Resolution of Remainder of Potential Topics for OPEGA Reviews That Are “On Deck”

Director Ashcroft reminded members that at the last meeting they received several requests from joint standing committees. The request from the Legislative Delegation regarding the Public Safety Answering Point (PSAP) was voted onto OPEGA’s work plan. The Committee had requested additional information on the other two requests before making a decision.

GOC: Sen. Nass asked the status of LD 1003, Resolve, Directing the Office of Program Evaluation and Government Accountability To Perform A Performance Evaluation and Cost-benefit Analysis of the Dirigo Health Program.

A: Director Ashcroft referred back to the memo the GOC received from the Insurance and Financial Services (IFS) Committee encouraging the GOC to put Dirigo Health on OPEGA’s work plan and discussed at the May 8, 2009 GOC meeting. The GOC had concerns about legislation being passed that affected OPEGA’s resources and believes that Chair Hill had a discussion with the Chairs of the IFS Committee, and the sponsor of LD 1003, Rep. Lewin. The bill as amended did no more than what the GOC had already done, since the topic had been put on the “On Deck” list and the GOC was considering it for the work plan. The Resolve was no longer necessary and Director Ashcroft believes Rep. Lewin communicated that to the IFS Committee and the LD was voted ought not to pass out of Committee.

GOC: Chair Hill said she did talk with the Chairs of the IFS Committee, focusing more on encouraging joint standing committees to bring topics to the GOC, but to follow the usual channel. The Chairs had no problem in pulling back the Resolve, but in respect for Rep. Lewin asked that I speak to her. Chair Hill said Rep. Lewin was very gracious, understood the situation, and also shared that information with the IFS Committee.

GOC: Sen. Nass said the GOC had previously waited before acting on the Beverage Container Recycling Bill to see what the BRED Committee was going to take for action. He said there was an effort to reach a compromise, but could not.

A: Director Ashcroft said the bill related to the study was voted out of committee on a divided report both ought to pass as amended. The amendments are slightly different in their scope. The minority amendment focuses more specifically on the beverage container deposits and the majority amendment is broader in terms of all recycling efforts. She said her understanding from the OPLA analyst is that both amendments have been reported out of Committee. Both call for the State Planning Office to work with the Department of Agriculture to conduct a 2 year study of recycling rates, carbon footprints associated with recycling laws, barriers to recycling, and energy and economic efficiencies. The Committee is looking for private funding and the help of an expert in the field of municipal recycling programs to either conduct the study or assist them in developing an RFP. It does not mention OPEGA at all.

Director Ashcroft said the other request was from the Labor Committee and related to the Governor’s Training Initiative Program and asked for a review of the cost, effectiveness and criteria for selecting recipients. Their concerns are about the recipients of the benefits of the program and that the program was not achieving all that was intended. The Governor’s Training initiative itself is currently budgeted at \$1.1 million in General Fund for FY 10 and \$1.2 million in General Fund for FY 11. If the GOC went forward with the review, OPEGA would be in a position to provide information to the Labor Committee that may help with decisions about whether to maintain the Program, do it differently, or whether it was achieving its purpose.

Director Ashcroft said the GOC wanted to respond to the Labor and IFS Committees on the status of their requests. She said Dirigo is “On Deck” but the Governor’s Training Initiative is not. The GOC

needs to decide whether to leave Dirigo “On Deck” or to move it to OPEGA’s work plan at some point. The GOC could take either option or no action regarding the Governor’s Training Initiative Program.

GOC: Sen. Brannigan and Sen. Nass suggested that the GOC take no action on the Bottle Bill review and wait to see what happens with the bill. They asked what OPEGA would first do with the other 2 topics.

A: Director Ashcroft said OPEGA would do its preliminary research work for each topic and return to the GOC with suggestions of what the more detailed scope of the review should include. In the case of Dirigo, the IFS Committee has communicated a fairly detailed idea of what they would like to see included in a review and if it was the intent to try to support that Committee, OPEGA would be looking at those points. There may be an opportunity to sub-out the expenditure review piece to the State Auditor if they are in a position to put resources into it. There may also be a portion that might be done by a consultant like the cost benefit analysis and the comparisons of Dirigo to other private insurance programs. OPEGA has had wonderful support from the Law and Legislative Reference Library and may get their help to gather information on the legislative history, purpose, etc. If the GOC decides to put Dirigo on the work plan, there is a possibility that OPEGA could get it accomplished without doing all the work itself. Director Ashcroft would explore those possibilities.

GOC: Chair Simpson asked the Director to check on those possibilities and report back at the next GOC meeting.

GOC: Rep. Bickford asked how it would impact the 3 reviews currently on OPEGA’s work plan if Dirigo were added.

A: Director Ashcroft said PSAP will be moved to “In Progress” shortly. Maine Turnpike Authority and Medical Services in the Prison System are not “In Progress”. Based on the GOC’s directive at the last meeting, PSAP was to be given priority. It appears from the scope of work that the IFS Committee asked for, that there is information they would like to receive that could potentially impact decisions they may want to make around Dirigo policy. If that is the case, it would be most helpful for them to have the information by the first of the session. OPEGA would have to give it some degree of priority.

GOC: Sen. Brannigan said that the Legislature will be talking about Dirigo in the next couple of weeks and asked Director Ashcroft for clarification of what OPEGA would be doing for work on it.

A: Director Ashcroft said it is currently “On Deck” and they could wait to see what transpires through the rest of the session. Director Ashcroft will talk with the State Auditor, check on whether it could be parceled out, and how would it affect OPEGA’s workload. Dirigo could be discussed at the next GOC meeting to process what is the right time, if at all, to move it to the work plan.

GOC: Chair Hill thought it may be helpful to talk with the Chairs of the IFS Committee because they might narrow the scope.

GOC: Sen. McCormick said there is a bill moving forward dealing with the funding mechanism of Dirigo and also a report back coming in December to the IFS Committee from Dirigo in a major effort to modify the Dirigo choice offering and outline new criteria for people who are uninsured to be eligible for the Program in the future. There is work underway to change the Dirigo offering and OPEGA may be able to provide additional information to steer the IFS Committee to accept some of the modifications or eliminating the Program.

A: Director Ashcroft said her primary objective is to have a letter from the GOC back to the IFS Committee letting them know the status on their request.

GOC: Chair Simpson recommended adding to the memo that OPEGA is gathering information and contacting other Departments and will be reporting back to the GOC at its next meeting.

GOC: Chair Hill said whatever the GOC plans to do, it should supplement the report that Sen. McCormick spoke of.

Director Ashcroft then asked what the GOC would like to have communicated to the Labor Committee regarding the Governor's Training Initiative. It is a Program designed to encourage companies to expand or locate in Maine by reimbursing them for part of the cost of training workers to upgrade their job skills or to train people to be appropriately prepared for their work. There are also a number of services that could be provided under the Program. She said the component the Labor Committee is concerned about is that the program allows for incumbent workers in an existing Maine company to be trained to upgrade their job skills. They noted that it seems incumbents are the ones who are receiving the majority of the training. The Labor Committee has asked that OPEGA review the criteria that is being used to select the beneficiaries of the Program, whether that criteria was still in the best interest of the State in terms of the purpose and goals of the Program.

GOC: Rep. Bickford said one issue some of the members of the Labor Committee were concerned with is that it is a very small number of companies that are using the Governor's Training Initiative, but they are very large companies, and they may be taking advantage of the system.

A: Director Ashcroft said the GOC needs to decide if they want to put the request "On Deck" and have it available for when they want to add topics to OPEGA's work plan, put it directly on the work plan or do neither.

GOC: Sen. Nass asked if the Program has been in a declining budget position and has the State devoted less and less resources over the past ten years.

A: Director Ashcroft said she looked at the trend over the past five years and it appears there have been some reductions, but not a lot.

**Motion:** That the Governor's Training Initiative Program be moved "On Deck" (Motion by Chair Hill, second by Sen. Nass, PASSED, unanimous, 9-0).

Director Ashcroft referred the GOC to the list of topics that had been ranked and asked if the Committee wanted to vote any of the topics off the "On Deck" list.

GOC: Chair Simpson said she did not see reason to remove any of the topics at this time.

GOC: Chair Hill said she also preferred to leave the topics on the list and although some had a low ranking they were of concern to someone. She suggested there may be a way to consider doing a letter to a department or a committee, stating that concern has been brought to the GOC and would like them to take a look or address it.

A: Director Ashcroft said there are a couple of topics that Chair Hill's suggestion could be used on and she will report additional information back to the GOC at its next meeting.

Director Ashcroft moved to OPEGA's work plan. **Durable Medical Equipment and Medical Supplies** is in progress and OPEGA is moving from fieldwork to the reporting phase of the review. The target date for releasing the Report is July 24, 2009, pending what the GOC decides for a meeting schedule over the interim. **Fund for Healthy Maine Programs** is also in progress and OPEGA is hoping to have the final Report August 28, 2009. The **Maine State Prison Management Issues** is complete and will be turned into a formal Report.

GOC: Chair Hill asked for clarification of how OPEGA continues to monitor report findings and recommendations.

A: Director Ashcroft said OPEGA keeps a data base for the findings and recommendations on the reports and either follows up on the date they are due or periodically does a follow-up to determine the status of implementation of the recommendations. When the pledged action has been taken and OPEGA thinks it sufficiently meets what it was suppose to address, it is closed. Those recommendations that have not been implemented or actions taken have not been sufficient to address the concern remain in an open status. OPEGA periodically reports on the open items to the GOC for discussion and the GOC decides whether to take further action. At some point if nothing happens on them, OPEGA needs a decision about whether to close them.

**Leased Office Space** is still suspended and the GOC will have to make a decision on it. Rep. McLeod has a continued interest in this topic. Director Ashcroft has put together a summary of the status of the Leased Office Space which she will provide to the GOC at its next meeting.

The GOC moved to Planned reviews that were voted on OPEGA's work plan at the March 27, and May 8, 2009 meetings.

**Medical Services in the Prison System** – The Director reminded the Committee that at the March 27<sup>th</sup> meeting the GOC voted this review on to OPEGA's work plan. This is a large General Fund contract. In addition to suggestions of possible problems with the medical services, the large contract should also be reviewed. OPEGA has seen other states' audits on the same contractor and their results have listed issues with this contractor.

GOC: Chair Hill asked at what point Director Ashcroft feels consultant fees should be used to supplement what OPEGA is doing to allow the GOC to look into other areas or more technical areas.

A: Director Ashcroft said she would make a decision after OPEGA has done some preliminary work and had a better idea of what the real questions are. The decision involves the potential cost of the contractor versus how quickly OPEGA could get it done. Another consideration is whether it is an area that OPEGA wants to have first-hand knowledge about. The Public Safety Answering Point may be a review where a consultant would be helpful.

Director Ashcroft noted that the Public Safety Answering Points review was a priority for getting started on next, based on the GOC's directive at the last meeting and OPEGA has started gathering information. Initial work will include talking with the Legislators who requested the review to make sure we are clear what their concerns are. We will look at the work the PUC has done on rate setting. OPEGA will also check on what the Department of Public Safety is doing in terms of investigation or review of service complaints and what they have identified as issues. OPEGA will make an assessment of where we could add value above and beyond what is already being done and bring a recommendation back to the GOC for a more detailed scope. At that point a determination of whether to pursue hiring a contractor would be made.

GOC: Sen. McCormick thinks this is a priority because of the safety issues involved.

A: Director Ashcroft will plan to have the preliminary work done on this topic and have the project recommendations for the GOC if the next meeting is scheduled for the later part of June.

**Maine Turnpike Authority** – The general scope is currently listed on the work plan as "To Be Determined" because there were a variety of concerns raised as the GOC discussed the topic and Director Ashcroft had not yet condensed them into a summarized statement for this document.

GOC: Sen. Brannigan said putting the Maine Turnpike Authority (MTA) on OPEGA's work plan is a big step and on most topics OPEGA has had preliminary research prior to them going on the work plan.

- A: Director Ashcroft said that actually putting a topic on the work plan means that OPEGA has authorization to start preliminary research at some point.
- GOC: Chair Simpson said usually the GOC gets information and the Committee has a discussion regarding what direction OPEGA proceeds. She said the work plan document noted a general direction on the Medical Services and Public Safety Answering Points reviews but there was no discussion documented in the Minutes to indicate what led the GOC to move the topic from “On Deck” to the work plan. Since she had not been at that meeting, she wanted to know what the rationale was for that move.
- A: Director Ashcroft said the MTA was first discussed by the GOC on March 27, 2009 and was voted “On Deck”. The Meeting Summary for that meeting reflects the GOC’s discussion. The GOC then ranked all the topics and at the May 8<sup>th</sup> meeting the decision to put it on OPEGA’s work plan was mainly based on those rankings and a review of some of the concerns discussed at the March 27<sup>th</sup> meeting.
- GOC: Sen. Brannigan said when the HHS Committee deals with, for example, the Maine Housing Authority, the Committee has to be careful in every communication with them not to “direct” them because of their unique status.
- GOC: Chair Hill asked what the scope would include.
- A: Director Ashcroft referred members to the OPEGA Review – Topics for Consideration and Reconsideration List, page 8, # 18, the summary of the potential area that might be looked at as part of the review. The MTA is also up for its Government Evaluation Act (GEA) Review in 2011 and it may be an opportunity for OPEGA to provide information that would support the Transportation Committee in that GEA Review. Some of the legislative areas of interest the Director has noted so far include whether the agency is effectively and efficiently carrying out the purpose for which it was created and what is the proper relationship to maintain between the Legislature and the agency in terms of oversight. Putting a topic on OPEGA’s work plan indicates that the GOC is interested in a review of this topic and is directing OPEGA to begin the preliminary work when it can. Once the GOC puts a topic on OPEGA’s work plan, unless the Committee gives it a specific priority, Director Ashcroft determines when she has resources available to work on it. Whenever OPEGA starts a review, the agency is notified. OPEGA does the preliminary work and comes back to the GOC with recommendations about whether or not to go forward in a more detailed way or whether to stop. If OPEGA recommends proceeding with the detailed review, we also recommend what specific questions would be worth pursuing. Director Ashcroft said that in this case, OPEGA’s preliminary research work would encompass getting a general understanding of the whole agency, similar to the type of things listed in the Statute for the Government Evaluation Act. There may be particular activities they are involved in that are more of a high risk and that is where OPEGA would recommend doing a more detailed review. Those risk areas are not known at this point.
- GOC: Chair Simpson said there are a number of areas listed and did not know if the GOC had some discussion about what OPEGA would specifically focus on. If the law says surplus funds are to be transferred to the State, then why has that not happened in 19 years.
- A: Director Ashcroft reiterated that before OPEGA did anything beyond preliminary work on this review, it would be seeking approval from the GOC on a more detailed scope. What is being done now is laying out all the possible items that could be looked at. Part of the preliminary research work would be to gather further input from Legislators on their key areas of concern.
- GOC: Chair Simpson said she personally would have preferred the Committee to have had that conversation when the MTA was voted to be put on OPEGA’s work plan. The GOC should have given some direction. On the other reviews, the GOC gave direction when putting a topic on OPEGA’s work plan. She said that is a cleaner way of doing business so that those being put on the work plan know what it is that the GOC is looking at.

- GOC: Chair Hill said there was discussion at the last GOC meeting and there was also discussion in prior meetings about MTA. She wanted to emphasize that the Committee had conducted itself openly, fairly and with mics on in those discussions and the decisions made as a result. She noted that she had made the initial filing with the Director to have a review of the MTA considered by the GOC. Among other issues, she had shared with the GOC her concerns about MTA's contracts and relationship with its engineering contractor. She had also discussed her concern that MTA and some legislators always give the MTA's bonding process as a justification for why the Transportation Committee, and the rest of the Legislature, could not perform certain oversight activities with the MTA or ask questions about MTA's finances. She wanted OPEGA to look at whether that was true. She reminded the Committee that they had been told by Linda Pistner, Chief Deputy with the Attorney General's Office, that the MTA was within the GOC and OPEGA's jurisdiction so she did not feel that a review of MTA was going off in directions that the GOC should not go.
- GOC: Chair Simpson said she didn't think there was a suggestion that the GOC could not look at MTA, it was more about what would be appropriately within scope.
- GOC: Chair Hill also wanted to make it clear, as she had at the last meeting, that the high ranking that had been given to the MTA topic when the GOC did its ranking exercise did not reflect any ranking from her. She had confessed to being one of the members that had not turned in her ranking sheet. She said the GOC did have discussion at the May 8th meeting about the rankings and what should be moved to OPEGA's work plan from the higher ranked topics.
- GOC: Chair Simpson again noted that the current Work Plan document did not give any general scope for this review and that the discussions at the May 8<sup>th</sup> meeting that led to the topic being put on the Work Plan were not noted in the Meeting Summary. She said she was personally uncomfortable, having not been present for those discussions, voting to put MTA on OPEGA's Work Plan because she did not know what scope of work was being considered. She said it would be helpful to have more information about what is being reviewed when something is put on the Work Plan. She also felt that discussions that were had should be reflected in the Meeting Summary for the benefit of the several members that had not been at the meeting and noted that the Meeting Summary contained full discussions about the PSAP review being put on the Work Plan.
- A: Director Ashcroft apologized that she had not filled in a general scope for this review on the Work Plan document because she had not had time to condense all the potential areas for a review into a succinct statement. For the record, that general scope statement would likely be around the effectiveness and efficiency of MTA in accomplishing the legislative purpose for that agency. The Director also explained that part of the reason the May 8<sup>th</sup> Meeting Summary did not reflect the GOC discussions regarding MTA is because the discussions were similar to what had already been covered and recorded in past meeting summaries. Director Ashcroft committed to revising the Meeting Summary for May 8<sup>th</sup> to either reflect the discussions or to provide a reference to the discussions in previous meeting summaries.
- GOC: Rep. Bickford said he wanted to clarify that when the GOC did vote to put MTA on OPEGA's work plan it was after the GOC had already put it "On Deck" at a prior meeting so the discussions had already happened. When the GOC voted MTA on the work plan, there was not lengthy discussion on the subject like there had been in previous meetings. He said the GOC had put the topic "On Deck" based on those discussions and at the last meeting looked at how high it was on the ranking list. Based on that, it was moved on to the work plan. He explained his understanding of the review process was that when work was started on something that was on the work plan, OPEGA revisited the potential scope areas that had been captured through previous GOC discussions and other avenues. Then normally, when OPEGA had a more defined scope to recommend it is brought back to the GOC for further discussion.



- A: Director Ashcroft confirmed that is the process. She said OPEGA has built in points where the GOC gets to direct what its resources are going toward as much as possible without delaying the work.
- GOC: Chair Simpson asked if Director Ashcroft had more information on the MTA. Director Ashcroft said it has been added to the work plan but OPEGA has not started on it and does not have plans to start it right away. OPEGA currently has two reviews going and will be adding PSAPs to the In Progress status. Chair Simpson asked if OPEGA could forward to MTA the previous Meeting Summaries and the items of interest so they know what has been discussed and be prepared to assist OPEGA.
- A: The Director said she would do so.
- GOC: Sen. Brannigan said OPEGA should not delay in getting an answer about the surplus funds that should be transferred. If there was no surplus to be transferred that explanation should be known so the question does not hang out there as an allegation that MTA is doing something wrong. He thought the GOC needed to be careful not to be unduly influenced by areas of controversy.
- GOC: Chair Hill said surplus is a matter of how you set up your books. She said she is not saying something is wrong, but there are lots of legitimate expenditures that could be made that would result in an organization not arriving at a surplus. So part of the question is what are some of those expenditures and are they reasonable expenditures or could they be reduced so as to end up with a surplus that could be transferred for the benefit of the people of the State of Maine.
- A: Director Ashcroft said she had not considered the question about surplus transfer to be an allegation in the way we just dealt with the allegations of the Maine State Prison. She said it is a normal and natural question that might get asked as OPEGA looks at whether they are complying with Statute.
- GOC: Chair Simpson said the way it is written in the Topics for Consideration document implies an allegation. It says that in the Statute it requires MTA to give back a surplus and that happened until 1997 and then there was some kind of agreement not to. She said an agreement does not trump statute. Therefore, the way this is written implies that there is a surplus and an agreement was reached to go around the law and that would be an allegation.
- A: Director Ashcroft said she had not planned to give it any high priority in terms of trying to get it addressed and was going to incorporate it into the review when OPEGA got around to doing that. If the GOC wants something back more specific sooner, she would need to know that.
- GOC: Rep. Pendleton said she was satisfied with what the GOC has done so far. It is good, it is what was done in the past. She asked what the Committee needed to resolve this matter, it has to move on.
- A: Director Ashcroft said MTA is currently in the category "Planned" on the Work Plan. When she gets resources freed up to start working on that review, she will be back to the GOC to let them know that and to ask if there are any particular questions the GOC would like to have factored into the preliminary research. OPEGA will do the preliminary research and then return to the GOC with a recommended direction for the detailed review. She was planning on incorporating the questions about the surplus, i.e. is there surplus or not and what is suppose to be happening with it, into the review and not trying to answer it right away or requiring the agency to answer it right away. If the GOC does want that, Director Ashcroft needs to make that happen, but she was not planning to and is therefore, looking for direction from the GOC.
- GOC: Rep. Pendleton asked the Director if she needed a "motion" on this.
- A: The Director said she did not.

## **REPORT FROM OPEGA DIRECTOR**

- **Project Status Report**

Not discussed

- **Proposed Legislation With Impact to OPEGA**

Not discussed

- **Follow-up on Action Items From Last Meeting**

Not discussed

## **NEXT COMMITTEE MEETING**

There was discussion by the GOC that the June 12, 2009 date would not work for the next meeting because of session. Rep. McLeod suggested that the Chairs and Director Ashcroft work out the next meeting date and let the other members know what was decided.

## **ADJOURNMENT**

The Government Oversight Committee meeting was adjourned at 12:44 p.m. (Motion by Sen. Brannigan, second by Sen. Nass, unanimous).