



SEN. ROGER J. KATZ, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

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SEN. DAVID C. BURNS
SEN. PAUL T. DAVIS, SR
SEN. BILL DIAMOND
SEN. STAN GERZOFSKY
REP. MICHAEL D. MCCLELLAN
REP. RICHARD H. CAMPBELL
REP. ROBERT S. DUCHESNE
REP. ANNE-MARIE MASTRACCIO
REP. DEBORAH J. SANDERSON

**MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY
March 13, 2015
Accepted 4-10-15**

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:03 a.m. in the Cross Office Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Johnson, Sen. Davis, and Sen. Gerzofsky
Joining the meeting in progress: Sen. Burns and Sen. Diamond

Representatives: Rep. Kruger, Rep. McClellan, Rep. Duchesne, Rep. Mastraccio
and Rep. Sanderson
Joining the meeting in progress: Rep. Campbell

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Scott Farwell, Analyst, OPEGA
Amy Gagne, Analyst, OPEGA

Taxation Committee members: Rep. Bickford, Rep. Russell, Rep. Seavey and Rep. Goode

Executive Branch Officers and Staff Providing Information to the Committee: Joan Smyrski, Director Community Services, Department of Health and Human Services
Janet Whitten, Children's Licensing and Investigation Manager, Department of Health and Human Services

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

Director Ashcroft introduced Amy Gagne OPEGA Analyst. Ms. Gagne's first day of employment with OPEGA was March 9th. The GOC welcomed her.

SUMMARY OF THE FEBRUARY 13, 2015 GOC MEETING

The summary of the February 13, 2015 Government Oversight Committee meeting was approved. (Motion by Sen. Davis, second by Rep. McClellan, passed, unanimous vote.)

NEW BUSINESS

- **Briefing on OPEGA Proposal for Legislative Review of Tax Expenditures** (A copy of the Proposal is on OPEGA's website at <http://legislature.maine.gov/uploads/originals/final-proposal-for-legislative-review-of-tax-expenditure.pdf> or a copy can be obtained by contacting OPEGA.)

Joining the GOC at the Horseshoe from the Taxation Committee were Representatives Bickford, Russell and Seavey. Chair Katz noted that other members of the Taxation Committee in the audience were Senators McCormick and Libby and Rep. Goode.

Director Ashcroft presented the Proposal for Legislative Review of Tax Expenditures.

Chair Katz asked what the total amount was for tax expenditures encompassed by this proposal. Director Ashcroft did not have the dollar amount with her, but said OPEGA did calculate the amount when working with the Tax Expenditure Task Force. Chair Katz wanted to put in perspective the importance of the review because the dollar amount was in the billions. Director Ashcroft said that was correct and the difficulty in calculating a total is that the estimates that are put forth by the Maine Revenue Services for foregone revenues are often in a range so there is not an absolute number.

Rep. Mastraccio said it would be of interest to her to know how much of the money in revenues that the State is not receiving are within each of the review categories. Director Ashcroft directed the GOC to Appendix G of the Proposal which lists the expenditures, the rationale assigned to each, the category for evaluation that OPEGA put it in, the expenditure type, a brief description of the expenditure, estimated revenue loss for FY15 and the statutory cite for the enabling legislation.

Chair Katz said he knew of a couple of other States that have started to implement similar review processes and asked if the Director knew whether that has led to the Legislatures in those states being more aware of the need to identify more specific goals in the legislation for a new expenditure. Director Ashcroft said she thinks it has. She did not want to speak incorrectly, but she thinks some states have also passed legislation requiring that when a new tax program is established it has to have "x, y and z" including a clear goal and intent associated with it going forward.

Chair Kruger said in reviewing OPEGA's proposal he was impressed by the organizational skill that was brought to the proposal because the topic is very complicated and a dense subject matter and OPEGA brought it together in a consumable form. He said he appreciated the work of the Director and OPEGA staff.

Sen. Johnson referred to Appendix I and the column "Potential Additional Measures for Specific Tax Expenditures", and specifically to the "Measures of wages and benefits for qualifying jobs" given for tax expenditures with job creation as the intent. He asked what sorts of measures OPEGA was envisioning and whether they included an indication of how the wages for new jobs relate to wages statewide, or the prevailing wage in a job category.

Director Ashcroft said that some of the expenditures focus on creating jobs with a particular level of wages and benefits. So some of the first measures may be looking at what the average wage is for the new jobs that have been created and the range in wage and benefit levels to understand whether the State is meeting the targets they were hoping to for new jobs, as well as whether those targets are being exceeded. She said there may also

be comparisons to wages in the geographic area or the State overall. Director Ashcroft said OPEGA would be lining out what specific measures would be used, and seeking agreement on them before starting the evaluation. Sen. Johnson said in his review of the tax expenditures, none of them had any reporting or follow-up measures of whether they are succeeding in doing what they are intended to do, or how well they are providing jobs for the people of Maine, as intended.

Rep. Mastraccio said the legislative history information that OPEGA anticipated providing as part of the proposed process was critical to her because of term limits and it would be helpful to anyone wanting to review the history of a tax expenditure.

Sen. Johnson asked if the Director anticipated there would be points when the review category assignments would be reconsidered and, if so, on what cycle, or frequency, would that be done. Director Ashcroft said it was anticipated that annually the GOC, in consultation with the Taxation Committee, would look at the categorization for the different tax expenditures. That would provide an opportunity to move them between categories, if appropriate. It was also anticipated that the schedule would be similarly reviewed so there is an opportunity to move things between years if warranted or worthwhile for legislative purposes. It would also give the opportunity to make adjustments for tax expenditures that may have been added, repealed or modified in the last year.

Rep. Russell asked if the Legislature will be able to look at why a tax expenditure is not being utilized. Is it because people don't know about it, or because the process to get the tax expenditure is too difficult and should be made simpler? She asked Director Ashcroft how to build that in. Director Ashcroft said OPEGA was recommending that the Taxation Committee and/or GOC look at the expenditures listed that OPEGA has those questions about and decide whether they should be added to the review schedule. She thinks it would be a matter of looking at what the intent of it was, what are they trying to incentivize and is that still an important thing. Those might be expenditures to put on the full evaluation schedule with the objective being to determine why it isn't being used.

Rep. Mastraccio noted that the inability to get data has made it difficult for LCRED Committee to evaluate programs in the past. She said LCRED has sometimes asked DECD why they can't get the information requested and evaluate that particular business incentive program. DECD says it is confidential information.

Rep. Russell asked if legislators evaluating a program would have access to aggregate data even if they don't have access to confidential information. Director Ashcroft said that was correct. OPEGA deals with confidential material frequently in their evaluations and cannot disclose in the report, or at a public meeting, anything that will allow identification. However, the confidential data can be rolled up and reported in a meaningful way at an aggregate level to give an overall picture of the program.

Rep. Bickford referenced occasions when the Taxation Committee has Maine Revenue Services (MRS) in front of them and MRS has the confidential data, but says it will not aggregate it and share it with Taxation because it is proprietary information. For example, MRSA will not say they have four shipbuilders and between them they see \$5 billion in sales. He asked why the Committee would be able to get that information from OPEGA when MRS could not provide the aggregate data. Director Ashcroft said she could not speak for MRS, but understood why, in the specific example Rep. Bickford gave, they could be limited in what they disclosed because some of the programs have only a few beneficiaries and by virtue of disclosing much of anything, you disclose the beneficiary. It was OPEGA's understanding that MRS was able to provide aggregate type level data however, so that might be a question for MRS.

Rep. Russell said if the Legislature is giving a significant amount of revenue to companies she would assume they would want to make sure the Legislature continues to give it to them in some capacity and, in order to do that, they need to be able to demonstrate and quantify the benefit to the State for providing it. She said perhaps that is something they should look at as a joint committee. If she does not get the information that proves that the program is working, then she would not be inclined to continue providing the benefit.

Director Ashcroft said data is going to be an issue moving forward with tax expenditures. She said a number of other states have been doing evaluation work in this area and found the same thing as did the evaluator that DECD just used to complete the economic development evaluations. The need to have consistent reporting of needed data should be one of the first things recommended. If evaluators and legislators are not going to draw on, for example, confidential tax data all the time, there needs to be some other reporting and validation mechanism established that allows legislators to get the information needed to understand the programs. What OPEGA would be looking to do over time is to get processes in place where the data that is needed is more readily available and in a form that everybody is comfortable with sharing. Director Ashcroft said some states have been considering adding a provision to make the sharing of data necessary to do such an evaluation requirement.

Chair Katz asked if Director Ashcroft could run through, for the GOC and Taxation Committee, the specific kinds of information she anticipates being able to get to in order to do the review of programs. Director Ashcroft summarized the “Data and Data Sources” of OPEGA’s Proposal.

Sen. Johnson asked about the MRS Certification Data and whether Director Ashcroft was referring to reporting by the certificate holders regarding the values of their purchases that were exempt. Director Ashcroft said she did not think they had to report the value of purchases but that there is an application that they have to complete to get a certificate and expected there would be some information about the beneficiary that could be gleaned from that which may otherwise not be known.

Chair Katz said Maine is not the first State to undertake a process like this and asked if the Director knew if the data sources she talked about were similar to what other states have used. He said there is a lot of concern, and a legitimate concern, that proprietary data a business has is somehow going to be made public, or broadcast in such a way that it would affect their business. Chair Katz asked if Director Ashcroft knew the experience in other states and if this process was similar to what other states are doing. Director Ashcroft said part of what OPEGA did in determining the suggested performance measures was to look at a number of evaluation reports from other states. She said there were two examples in Appendix F of data that was reported by another state when evaluating a program similar to some of Maine’s programs. Director Ashcroft said it appeared in many of the evaluation reports OPEGA reviewed that other states end up reporting whatever they could from whatever data they were able to get. The approach in putting together this proposal was to identify what would be needed for measures to be able to tell if the tax expenditures were working and then look for what kind of data would be needed to be able to get at that. Reporting requirements or other processes to capture data may need to be established where data is not already available.

Chair Katz asked if there would be an opportunity for the GOC to have input on the specific measures and data OPEGA would be seeking to say that sounds perfectly reasonable to achieve the objective or you are going too far. Director Ashcroft said that is building in at the point, prior to evaluations beginning each year, where OPEGA recommends to the GOC what the applicable performance measures would be and whether OPEGA believes the data for the measure exists or can be obtained. Those conversations would be part of the package of things that is approved by the GOC in consultation with the Taxation Committee before OPEGA got started. To the degree that there were concerns, that would be a good place to air them. Director Ashcroft thinks the information in this proposal indicates what kind of data OPEGA would need.

Chair Katz wanted to confirm that neither the Taxation or Government Oversight Committee would be able to review the information on businesses’ tax returns. Director Ashcroft said that was correct.

Rep. Duchesne thought it was an effective way to move forward on tax expenditures.

Director Ashcroft continued with the Proposal presentation.

Sen. Burns wanted to confirm that there may be additional funds needed to support the Taxation Committee meetings during the interim for the purposes of discussing tax expenditure programs. Director Ashcroft said that was correct.

Rep. Sanderson asked if it was known whether the independent evaluations that DECD was statutorily required to perform were being done at this time. Director Ashcroft said they just did complete one last year.

Rep. Mastraccio said she was part of the DECD evaluation of the Pine Tree Zones for Economic Development and the cost of that evaluation was more than what it would cost to implement this Proposal for two years. She said in her opinion that evaluation did not get to what the Legislature was asking.

Chair Katz moved to the GOC process. Today the Committee received OPEGA's Report. The Report was given to the Taxation Committee to consider and come up with legislation that they believe is appropriate. He asked if there were any other questions, particularly from the members of the Taxation Committee, about the respective roles between the Taxation Committee and the GOC.

Rep. Russell said she was assuming that the Taxation Committee was authorized through the previous Resolve to report out a new bill other than the bill being proposed. Director Ashcroft said that was correct.

Sen. Johnson said he was impressed by the way OPEGA laid out the Proposal for Legislative Review of Maine State Tax Expenditures and thinks it is an important milestone for Maine should they be successful with the legislation. Every time the Taxation Committee has tried to look at tax expenditures they do not have the information necessary to make good decisions. He thinks the involvement of OPEGA with its ability to access confidential information will be able to get the necessary information regarding programs and is an excellent way to proceed.

Chair Katz said the idea that the Legislature should be regularly reviewing the checks, so to speak, that the State is writing for tax expenditures to see if they are accomplishing the purposes they were created for is important. He noted that when other states have set up similar processes they sometimes had to set up a separate entity to do it, but Maine already has OPEGA and it is a good fit. They may need additional staff, but they already have the expertise to do the reviews that the Legislature would be asking for.

Rep. Bickford said as a member of the 124th GOC he has seen OPEGA's work and therefore he is not surprised by the level of detail in the Proposal.

Sen. Burns said he hopes the GOC keeps in mind that as important as the review of tax expenditure programs is, they should not forego the other important issues OPEGA reviews and it would not be appropriate to just cut into the staff's time for working on other pending issues. OPEGA will need additional staff in order to do evaluations of tax expenditures.

Rep. Russell referred to the extremely large sums of money involved in the tax expenditure programs and said it is a significant amount of money that needs to be evaluated. She thinks OPEGA has set the framework so the programs can be evaluated very much like they do the State's biennial budget. She said OPEGA has laid out a very competent and compelling framework that will set the stage down the line so that the Legislature can make choices. Every line item is a policy choice and now they would get to evaluate that policy choice to make sure that it is still right for the people of Maine. Rep. Russell thanked OPEGA for their work.

Rep. Goode said a couple of comments discussed by other Taxation Committee members and himself was to make sure it is made clear what goes to the GOC and what goes to the Taxation Committee upfront because there are a lot of people involved and interested in it. He said he was excited about the work and his experience on the Taxation Committee is that they get a lot of bills that deal with creating new tax programs, or repealing old ones, and when the Committee acts on them it is usually based on anecdotes or how many come to the Committee for hearings or the emails that are received and said that was not the best way for a committee to do their work.

Rep. Goode said Sen. Libby noticed on page 28 it lists different agencies to consult with and said the Finance Authority of Maine should be added because they might oversee some of the programs. He also said on page 29 it talks about having hearings on some of programs and that it should be specified whether those were at the Appropriations or Taxation Committee and making sure they are cognizant of that division of labor.

Rep. Mastraccio asked what the process was moving forward. Director Ashcroft said the way the Resolve envisioned it was that this Proposal would be considered by the Taxation Committee and they are authorized to report out a bill to implement it, with changes as needed, to put it in place. She said it is her expectation that at some point it will be on the Taxation Committee's agenda to decide what they think about it. For the GOC, it is a matter of seeing what happens in the Taxation Committee and then if nothing is done, the GOC can decide whether they want to move forward with implementing legislation.

Sen. Johnson noted that the estimate for additional resources needed to do this was under half a million dollars for the biennium in order to give the Legislature the information needed to make good decisions regarding billions of dollars. He thinks people need to keep in perspective that this is an extremely wise investment and it needs to happen.

Chair Katz and other members of the GOC thanked the members of the Taxation Committee for attending and participating in the meeting.

- **GOC Consideration of New Request for OPEGA Review of Northern New England Passenger Rail Authority**

Director Ashcroft said new requests for reviews are periodically brought forward for the GOC's consideration. Ms. Cherubini handles the processing of the new requests that come in to OPEGA. Her work includes doing background research on the topic that has been proposed and working with the sponsor of the review request to understand what they are interested in seeing reviewed. Director Ashcroft referred members to the Quarterly Listing of Audit Requests for GOC Consideration in their notebooks. (A copy of the Quarterly Listing is attached to the Meeting Summary).

Director Ashcroft said the sponsor of the review request for the Northern New England Passenger Rail Authority (NNEPRA) is a member of the GOC and she was looking to the Chairs as to whether they wanted to hear from Sen. Gerzofsky or Ms. Cherubini first.

Chair Katz asked that Director Ashcroft summarize for the GOC the review request process. Director Ashcroft said a request for an OPEGA review needs to be in writing and to either be sponsored by a legislator or have a legislative sponsor for it. As part of the process OPEGA typically does some background work on the topic to try to provide the GOC with information that might be useful in deciding whether the topic is something they think would be valuable to use OPEGA's resources on. She said there are a number of different actions the Committee might consider taking in considering the request. The GOC will need to make a final decision about what they are going to do with the request and there is a written process and procedure for that. Typically the Committee does not hear from the public, or the agency, at this point, but does hear from the sponsor as to what may have led to the request.

Chair Katz noted that there were a number of people at the meeting interested in the NNEPRA review request and wanted to emphasize that the GOC is holding the meeting in public, as they do all GOC meetings, but it is not a public hearing in the sense that they will be soliciting public comments on the issues because that is not the GOC's process.

Sen. Gerzofsky spoke in support of his request for an OPEGA review of the NNEPRA. NNEPRA is a public transportation authority created in 1995 by the Maine State Legislature to develop and provide passenger rail service between Boston and points within Maine. Their mission is to develop and manage a quality passenger rail system that meets the transportation needs of customers, delivers value and enhances economic development within the region served.

Sen. Gerzofsky said as done in years past with the Maine Turnpike Authority (MTA), Maine State Housing Authority (MSHA) and other governmental agencies, the request for a review of the Rail Authority continues the work and mission of the GOC and OPEGA to conduct an objective and independent performance audit of a taxpayer-funded entity to ensure they are achieving intended results and are effective, efficient and economical. Additionally, OPEGA will be able to evaluate compliance with laws, regulations, policies and procedures.

Sen. Gerzofsky said many concerns have been raised over the past few years about the operations and management of NNEPRA. There appears to be a real lack of trust amongst the public. By conducting a review, the GOC will be telling the people of Maine that they are listening and are taking their concerns seriously. The Committee will also be able to focus on the effectiveness, efficiency and economic use of resources provided to NNEPRA, which is supported by the taxpayers of Maine.

Ms. Cherubini said a part of OPEGA's process on review requests is to look at the statutory authority and whether the topic would be within OPEGA's purview. NNEPRA is created by the Legislature as a quasi-governmental entity like MTA or MSHA so it is something OPEGA could look at. It is created to promote passenger rail service in Maine and points within and outside the State. NNEPRA contracts with Amtrak to operate the Downeaster and provides passenger rail service from Brunswick to Boston. Each year NNEPRA submits an annual report to the Legislature and it also provides the other reports required under the quasi-governmental statute. The reports are available on their website.

NNEPRA is governed by its seven member board of directors. The Governor appoints five of the members with Legislative confirmation and two are ex officio directors – the Commissioners of the Maine Departments of Transportation (MDOT) and Economic and Community Development (DECD). The Board hires NNEPRA staff which is currently a staff of six that includes an Executive Director.

Ms. Cherubini said there have been concerns raised regarding management of the Rail Authority and treatment of individual Board members. She said NNEPRA is required by statute to submit its annual operating budget to the Commissioner of MDOT for approval. MDOT's Work Plan for 2015-2016-2017 calls for \$34.7 million of operating support for NNEPRA. The statute requires that fares be set at reasonable levels and the Authority has the ability to seek and use other funds necessary to pay for operational expenses. She said NNEPRA can apply for, accept, and disburse Federal funds and funds from other government agencies, and can also provide funds to government agencies in support of passenger rail service.

Ms. Cherubini said NNEPRA has an independent financial audit done each year. They contract with various railway companies including the Boston and Maine Corporation, Portland Terminal Company, Springfield Terminal Company and Pan Am Railway for capital maintenance and then Amtrak pays the host railroads to use the rails and has an agreement with the Railroad for general maintenance. NNEPRA reimburses the portion of the agreement billed by the Railroad to Amtrak as part of its funding agreement with Amtrak.

Ms. Cherubini said the possible areas that OPEGA might look at are cost effective and efficient use of resources by NNEPRA, processes and procedures for procurement, contracting and oversight of contractors, the effectiveness of oversight and governance, and the effectiveness of management in meeting NNEPRA's statutory purpose including long and short range planning. She said NNEPRA receives both federal and State operating support funds from MDOT, \$2 million in Special Revenue Funds were budgeted in each year of the 2014-2015 biennium to be matched by \$8 million in Federal funds.

Sen. Burns asked for clarification of the \$10 million figure mentioned versus the \$34.7 million figure. Ms. Cherubini said it appears to be about \$10 million a year, \$8 million in Federal funds and \$2 million in the other Special Revenue Fund. He asked if the \$34.7 million represented just normal expected increases. Ms. Cherubini said she has not looked into it in detail, but the \$34.7 million seems related to their long range plan. It is a three year plan and the \$34.7 million referred to spanned that three years.

Rep. Sanderson referred to the information regarding plans to locate a large maintenance facility in Brunswick next to a residential area and the controversy around that. She asked if that was more a municipal zoning issue versus something the Legislature would have oversight of. Ms. Cherubini said the possible areas of focus given for the review does not include a review of that particular decision or project. OPEGA would be looking more generally at oversight and governance and possibly the process of how NNEPRA makes decisions like site selection.

Chair Katz noted that NNEPRA is required to submit an annual report to the Legislature and any other reporting requirements of quasi-state agencies and asked what level of evaluation, or scrutiny, there has been from the Transportation Committee, or any other committee of jurisdiction.

Ms. Cherubini said she did not know, but did know that they submit their budget to MDOT and MDOT in their budget process includes a line item for those services.

Chair Katz referred his question to Sen. Diamond, a member of the Taxation Committee.

Sen. Diamond said it has been pretty much routine oversight. The Committee would relate to it, or have discussions if there were concerns raised through the budget review process and on occasion there will be legislation and the Committee would hear those bills. He did note that there have been more concerns this year than in the past.

Rep. Mastraccio asked if there would be an opportunity for OPEGA to find out what the oversight has been before the GOC decided to put the review request on OPEGA's Work Plan. She asked if the GOC could ask for additional information and then decide whether they wanted to proceed at another time or did they have to decide what to do with the request at this meeting. Chair Katz said a decision did not have to be made at this meeting. Director Ashcroft said another action the GOC might take is to request that OPEGA obtain additional information that the Committee would like to have as part of their decision-making process.

Rep. Duchesne wanted to follow-up on Sen. Diamond's comments and asked when the Transportation Committee reviewed the budget are they looking at the \$2 million that the State has to pay and whether it was broken down to what that money pays for. Sen. Diamond said the Transportation Committee will ask any and all questions slightly, directly-related to the budget or where rumors are abounding. It would be their intent, same as the General Fund, to find out all the information, asks all the questions necessary. The Committee does not give themselves any boundaries.

Sen. Gerzofsky responded to some of the questions by other members of the Committee. He said the location of the maintenance facility in Brunswick is being vetted through the Department of Environmental Protection and has nothing to do with his request for the review. He said the request to review the Rail Authority was brought to him from constituents from other parts of his district, not just from Brunswick. The concern in oversight is that, even as a Senator, he cannot ask a question without being told by the Executive Director to request it in a FOAA.

Sen. Gerzofsky said the \$2 million that goes to Transportation has a match for \$8 million of Federal money, but the STAR Account was created for that money to help with operating costs. The CMAQ (Congestion Mitigation and Air Quality Improvement Program) account money that goes to Washington in the form of tax on fuel that comes back to Maine has been used exclusively for NNEPRA. He said recently there has been a little bit of sharing of the funds, but in the past that account has been used solely for NNEPRA and has been in the millions. Sen. Gerzofsky said there is also millions and millions of dollars of bond money that Maine continually puts out and interest on bonds is also being paid for by the taxpayers of the State of Maine.

Sen. Gerzofsky said he not only sees a substantial amount of money involved, but also very little oversight, or participation, and that people asking questions about the Downeaster cannot get answers. He said his request for the review is about transparency because some communities may get railroad service and they have to have a sense of partnership and transparency so that they can ask questions and get responses. He has run out of

ways of trying to get an answer to a simple question over the last four years. He also noted that some NNEPRA Board members were unable to get answers to simple questions and a Board member just resigned because of the lack of transparency and participation. Sen. Gerzofsky said he finds it very difficult to support the agency and it is time that OPEGA start looking at the quasi-state agencies for a better understanding of how they function. He also believes that for the investment that Maine makes they should be able to account for it, not only in the Transportation Committee, who reviews NNEPRA's budget, but how that budget is being implemented. Sen. Gerzofsky said he found \$4 million left over from a bond from many years back sitting in a banking account unused.

Sen. Burns said there was a bill to expand rail service into central Maine and asked if NNEPRA was the entity that would do that. Sen. Gerzofsky said it is.

Rep. Sanderson asked if some of the concerns were brought to Sen. Gerzofsky by the DEP and is that why the piece about the maintenance facility was referred to in the Review Request. She questioned whether that was an inappropriate area for OPEGA. Sen. Gerzofsky said the location of the maintenance facility has no relevance to his request because it is a separate track and oversight of site selection is preempted by Federal law. He believes hearings are being held on the 25th in Brunswick regarding that issue.

Sen. Johnson said the treatment of a new Board member as described by Sen. Gerzofsky was concerning. The quasi-governmental agencies' boards should be transparent, inclusive, and are to do their work above board. As described previously, there seems to be some manipulation of process and he thinks that should be looked into further to understand what is going on and why.

Rep. Mastraccio referred to an earlier statement made by Sen. Gerzofsky that he looked forward to participating in the Committee's work on the audit review of NNEPRA in the coming months. She asked if the GOC were to authorize the review request, would the GOC be participating in the audit. Director Ashcroft said no. If the GOC voted to put the review request on OPEGA's Work Plan, assuming that there was no particular priority that they assigned to it, OPEGA would initiate the review at some point. The first part of that review would be OPEGA's preliminary research phase where the Office is looking to understand the topic better for the purpose of coming back to the GOC with a recommendation on whether to proceed with a more detailed review, and what specific questions OPEGA would suggest focusing on as part of that. OPEGA looks for the GOC's approval of the more detailed scope, but other than that there is no Committee involvement in the review other than status updates given by the Director until the report is released.

Rep. Mastraccio said it was her understanding, even if Sen. Gerzofsky put in the review request he would just be a member of the GOC and not be able to participate in the review. She said even though legislators try to step back and be objective about an issue, sometimes everything ends up being personal and she is concerned about remaining objective as a committee and doing things properly. She needed to understand that they will operate as a Committee and that there is no individual on the Committee that would then participate in the process. Director Ashcroft said that would be true of any legislator, on the GOC, or not, and is one of the reasons why OPEGA was set up as it was. OPEGA staffs the GOC, but is also independent from the GOC in that particular regard. Once the Committee hands OPEGA an assignment, OPEGA does it independent of the GOC and other legislative influence.

Chair Katz thanked Rep. Mastraccio for raising that issue because the GOC in a very bipartisan way has been diligent about insulating OPEGA from any Committee member, or anyone else, during the course of a review. Director Ashcroft noted that is why it is important to get agreement on the questions that will be answered in a review because OPEGA designs its work to answer those questions and does not take direction from anybody else about what they are focused on going forward.

Sen. Gerzofsky said some of the structure being talked about here was fought for very hard when GOC/OPEGA was established and he was a part of that. They wanted OPEGA to be independent from the GOC and the Committee had to step away and let them do their work. He said he is learning more about it

now than he knew when it was created, but what he also had known is that once a review is brought in, legislators stay away because OPEGA does their work independently.

Rep. Duchesne was trying to understand what the actual complaints are in the review request and what the fundamental questions were that they were going to be asking. He asked if OPEGA staff had enough of an idea of what the complaints are about to know what the questions will be. Director Ashcroft wanted to dispel the notion that OPEGA only looks at things that people complain about. That has often been the case lately, but it is not the only reason to look at a state agency or a quasi-agency. The areas of focus that OPEGA listed for this Audit Request are typical functional areas that they would look at in a quasi-state entity, or any other entity, and have done so for many other agencies. She thinks OPEGA can provide the GOC with examples of times they have done similar types of focus in other agencies. OPEGA and the GOC can get into discussions about what specific questions the detailed review would seek to answer once OPEGA has completed preliminary research.

Rep. Campbell said if his area is to ever benefit from passenger, or other rail services, it is important it is done right and if there are questions about it not being done right, it needs to be known now. He thanked Sen. Gerzofsky for bringing the review request forward.

Sen. Johnson said he was pleased with Maine having success with the rail and wanted to see it go a lot further. What he does not want is something that is going to bring trouble, failures, scandal and disrupt the good work that Maine needs to continue. If the agency is working as it is supposed to, as well as accomplishing good things, that is wonderful, but he thinks the concerns raised are reason enough to take a look at whether there are things that need to be improved in the agency in order to achieve ongoing future success.

Chair Katz said there were a number of alternatives. One is to ask OPEGA to seek more information with respect to what is already going on before the GOC makes a decision. Another would be to ask OPEGA staff to rough out areas of inquiry to bring back to the GOC for consideration for a review.

Rep. Mastraccio said she has never read a report of NNEPRA so she would prefer a little more information before she voted to move ahead, or even ask OPEGA to bring back possible areas of focus.

Sen. Burns asked if this review request was an opportunity for a rapid response. Director Ashcroft said rapid response is when the GOC wants OPEGA to start the review right away and ignore everything else they are doing until they get it done. She said she had not heard an interest in giving this request that type of priority. Director Ashcroft said the GOC often tells OPEGA what they would like for additional information as part of their consideration. The alternative talked about was having OPEGA line out other potential areas of focus before putting the review on OPEGA's Work Plan and having them do preliminary research and then coming back. If the GOC wants more information before making a decision it would be helpful to know what in particular it is that they would like more information about.

Rep. Duchesne said he was trying to quantify for his own benefit what the red flags are. Any time he has seen a Commission that is running into some public perception problems there is usually a set of red flags that you can list out that indicates potential problems. All he has heard here so far is some operational concerns based on some antidotes. He would like to be able to have a list of red flags that would lead the Committee to think NNEPRA ought to be looked at more closely. Maybe give Sen. Gerzofsky an opportunity to give the GOC a list of what the red flags would be.

Sen. Gerzofsky said when the concerns were brought to him there were specific problems. He was advised by OPEGA staff and members of the GOC to whittle it down to a few areas that would be looked at because nobody wanted a laundry list of complaints. He said after hearing from constituents, not only in his district, but also throughout other districts, he wrote a list of questions to himself in order to know what should be reviewed. The goal is to bring some transparency to what is going on with a state agency that is using tax dollars. For example, people were coming to him with their concerns about on time service declining. He

would like to see expanded service to Maine, connecting Maine's rural communities with feeder lines that would then feed into the Amtrak system. But it is a problem if there are communities that do not trust what is going on, and right now he has two stations in his district that both have problems in that the elected officials of those towns are asking questions and cannot get answers. Sen. Gerzofsky said his objective was making it public, and asking the GOC to look at the concerns constituents in the State of Maine have who are footing the bill, whether it is federal or state money. He wants to look at some of the statutory intent that created NNEPRA to bring the service in, not only to a small corridor along the mid-coast of Maine, but to the State of Maine. He would like to look at why that is not happening, and if it is not happening, is there something the Legislature can do to make it happen.

Sen. Gerzofsky referred to Sen. Hill's request for a review of MTA because of something that was going wrong in her district and he thinks that is applicable to what he is asking for in the review of NNEPRA. He is not saying that things were done wrong, but is asking the GOC to look to see how things were done to make sure they were done right. If there has been no oversight of some of the quasi-state entities, who would do that, if not done by the GOC. NNEPRA has not had any oversight by the Legislature. They have accounting with the Federal government for dollars and cents, but transparency, communication and giving the State a better product is what the review request is about.

Sen. Burns said transparency is a red flag to him. It does not mean that something is wrong, but it does mean that you don't know. Transparency warrants at least looking at that aspect - is the Board transparent, are the minutes available, are Board members contributing and participating, can the public find out where their money is going and how it is being used. In the final analysis all of that may prove to be all above board, but you do not know until it is reviewed.

Motion: That the Government Oversight Committee add the review of the Northern New England Passenger Rail Authority to OPEGA's Work Plan and that OPEGA will come back to the GOC with a suggestion for the course of review that the Committee will then vote on. (Motion by Sen. Diamond, second by Sen. Burns.)

Discussion: Rep. Mastraccio asked what would adding the NNEPRA review on to OPEGA's Work Plan do to the other reviews that are on the Plan. She said she understood the issue and that the Committee is discussing the possibility of the expansion of the Rail. She understands that before the State can expand the rail you have to make sure the vehicle in place for that expansion is working well. She said just on that basis, she would want to see how to govern that process and has no problem with that. Her concern, as a new member of the GOC, is there are topics important to her that are already on the Work Plan and she wants to make sure OPEGA will be able to do all of the work and asked where the NNEPRA review would fit in.

Director Ashcroft said OPEGA already has reviews in progress so barring the Committee telling her that this review has to have priority over any review currently going on, OPEGA will be continuing with the projects they have until they are completed. This review would be added to the list of other planned topics for the GOC to prioritize for OPEGA.

Chair Katz said he is going to vote in favor of the motion and it is not because he thinks there is anything improper going on at NNEPRA, but they are a quasi-governmental agency that does not get a lot of scrutiny from any committee of jurisdiction within the Legislature and he thinks it is important that those agencies, in particular, occasionally get reviewed. He does not see any other entity that is doing that and he hopes that the outcome of the review is that they are doing everything well and are an agency the State should be proud of, but without the review you do not know.

Vote: The above motion passed by unanimous vote, 12-0.

Chair Katz asked Director Ashcroft when she thought OPEGA could have a suggested course of action or scope for the review. Director Ashcroft said OPEGA would not be doing that until the review was initiated and OPEGA completed its preliminary research phase of the project. That research work can sometimes take a

month or two so the timing would depend on when OPEGA actually got started, which is a conversation the GOC would have to have about prioritization with the other reviews.

UNFINISHED BUSINESS

- **Response from DHHS Division of Licensing and Regulatory Services Regarding Child Care Facilities to Questions Asked by GOC at the February 13, 2015 Meeting**

Director Ashcroft said at the GOC's last meeting OPEGA gave the Committee the latest update from the Division of Licensing and Regulatory Services (DLRS) with regard to implementation of their action plan. It is a subject matter that is in suspended status on OPEGA's Work Plan, but OPEGA is planning to go back to the Division mid-year to review how they have implemented their plan and whether there have been improvements to the situations that were identified when the topic was put on OPEGA's Work Plan. The Committee had questions at the last meeting that they wanted DLRS to answer and DLRS has provided written responses. There were representatives from the Agency to answer any further questions the Committee may have.

Joan Smyrski and Janet Whitten introduced themselves.

Ms. Smyrski referred the members to the Agency's written responses in their notebooks. She and Ms. Whitten summarized that response for the GOC. (A copy is attached to the Meeting Summary.)

Rep. Sanderson noted that the Agency had only five investigators and asked if the nature of the complaint differentiates between whether you would assign it to an investigator or another entity in the Department. Ms. Smyrski said that was correct.

Rep. Sanderson asked what the criteria might be to elevate it to an investigator position. Ms. Whitten said if there is a clear allegation of child abuse and neglect, if they know they need to do interviews of children, the agency's investigators are forensic interviewers and they audio record those interviews. That is a major criteria if they know children have to be interviewed.

Rep. Sanderson asked if there was ever an opportunity while interviewing the children to video tape the interview so they could watch the body language as well and keep that frame of reference for the actual reactions to the questioning by the child. Ms. Whitten said they refer many of their cases to the Children's Advisory Councils (CAC) for forensic interviews as well. Interviews done by CAC are audio and video recorded.

Rep. Sanderson asked if DLRS triages whether they send children to the CAC forensic interviewers versus have one of DLRS's investigators go into the home and talk to the child depending on what the complaint might be, or do they do it after an initial visit to the home. Ms. Whitten said if DLRS has multiple agencies involved they try to reduce the number of times the child is interviewed so that they are not further traumatized through the process. DLRS would refer those to the CAC. She said they also refer to Spurwink, the Child Abuse and Neglect Clinic, where they also do the audio and video.

Chair Katz said there are a number of paths to take and asked who made the decision before the first interview where it is going to go and if it depends on the nature of the allegation. Ms. Whitten said it does. In her review of a complaint that comes in, if there is an allegation at that point and she believes there is also a possible criminal charge, then they are making the referral right from the start and are coordinating that effort. Often they begin their investigation and then bring law enforcement in.

Rep. Mastraccio asked how long it usually takes and how much of a response has DLRS been getting to the letter that is sent to the parent or guardian of a child named as a victim. Ms. Whitten said the expectation is to mail the letter out within twenty-four hours of obtaining an accurate up-to-date list of parents and children

enrolled. Once the investigator is out in the actual facility and obtains the list, DLRS has twenty-four hours. It does vary from case-to-case. If it is something that is more urgent and immediate, she requests that the investigators call the parents to let them know and then a letter will follow. In the letter it asks that the parent contact the investigator to be involved in the process.

Chair Katz followed up with an example - he gets a letter saying the daycare his child is at is under investigation. He assumes there is not a lot of detail in the letter. Ms. Whitten said that was correct. He said the first thing he is going to do is call the investigator asking for information and asked what DLRS's response would be. Ms. Smyrski said it would be general terms of what they have heard because they are only allegations at that point. Ms. Whitten said their statute does allow them to give the nature of the allegations so they would give enough information so the parent would feel at ease in making a determination of whether they wanted to keep their child at the daycare. If it is an allegation pertaining specifically to their child then generally DLRS is saying they need to meet the parent in person to discuss the allegations. Ms. Smyrski said DLRS would talk about the concerning behavior alleged, but not get into the details about who and when.

Sen. Johnson asked how long the process of the three letters notification had been in use. Ms. Smyrski said since September 2014. It is a new standard letter at three levels informing parents.

Sen. Johnson asked what DLRS had prior to that for notification. Ms. Smyrski said there was no standard letter. There was notification, depending on the situation, by the investigator but there was not a standard protocol. She thinks that is one of the improvements noted by families wanting to be notified in a more timely, concrete and predictable way.

Sen. Johnson asked what DLRS sent for letters if it found the concern was not substantiated and there is not a problem in the daycare. Ms. Whitten said they send a closing letter that indicates that it is an unfounded and unsubstantiated complaint. Ms. Smyrski said that is one of the three form letters she initially referred to. The first one would be that DLRS is opening an investigation and the second or third would be when they close the investigation. The second letter says the allegations were substantiated and the third letter is DLRS did their investigation and it was not substantiated. Ms. Whitten said a licensing specialist is also involved in the investigation so there is a concurrent track that is happening. DLRS would follow the letter that says there are rule violations with a formal statement of deficiency that comes from the licensing specialist that becomes a public information/record. Notices to parents informing them that their child was named as a victim do not become public record.

Chair Kruger asked if DLRS had a process for determining that they must move quickly if they thought that a very serious incident had occurred at a daycare. Both said yes. Chair Kruger asked if DLRS had enough staff resources at present to respond in a timely manner when they think there is a serious violation. Ms. Smyrski said right now she would say yes, but they have been asked to do more and more investigations and she does not have the trend data yet to assess whether more staff will be needed. She said at the Department of Education (DOE) there has been a growing number of concerns about children being neglected or abused in school settings. Currently in the State of Maine there are no investigators that go out to a school setting. A recent Resolve directed that DLRS would start to be available to the Department of Education to do some of that work. DLRS said they would try to do it with current resources and would do trend data for six months and then go back to DOE if the work load of referrals for allegations of abuse and neglect could not be handled with the current five investigators. Ms. Smyrski said right now DLRS does have enough staff, but she will know better in six months.

Sen. Johnson asked what DLRS's success rate was for completing their investigations within the timeframe set. Ms. Whitten said over the last twenty-two months they are averaging about sixty-five percent for meeting the thirty-five day timeframe and most of the time when they are not meeting it, it is because they are co-investigating with an outside agency or are waiting for additional information.

Sen. Johnson asked where DLRS stood in staffing for the proposed budget for the next biennium. Ms. Smyrski said the Children Care Licensing team was enhanced by twelve licensing inspectors and is in the budget to

make them permanent positions. They also had two supervisors added to the team, one for a south-west team and one for a north-east team and were able to add one support staff position. DLRS did not request or receive additional positions relating to the out-of-home investigations team. Sen. Johnson noted that it had not been mentioned that the licensing inspectors were the hold-up in completing investigations timely so he hoped DLRS would revisit their staffing levels in other areas because a sixty-five percent average for meeting the timeframe was not good. Ms. Smyrski said there has been a vast improvement, but they are not where they need to be.

Rep. Sanderson asked if it was the investigators causing the hold-up or was it the other entities which DLRS has to engage to help with investigations that makes it go beyond the thirty-five days. Ms. Smyrski thought it was fair to say that typically it is the combination of entities working together who are very committed to try to come to their findings together so they are not jeopardizing the investigation.

Rep. Sanderson asked, for those investigations exceeding the timeframe, how many days on average were they exceeding the thirty-five days. Ms. Whitten said she would have to look at each case to do an analysis of how far beyond each has gone. She is in regular communications with the investigators and so is generally up-to-date on whether there is a holdup and why. Ms. Smyrski noted that another commitment to making sure that investigations are completed thoroughly, with high quality and in a prompt manner, is that DLRS has included an expectation for meeting the benchmark in the yearly performance review for each investigator. Sen. Johnson hoped DLRS was also including the quality of the work completed.

The Government Oversight Committee members thanked Ms. Smyrski and Whitten for attending the meeting and answering their questions.

RECESS

Chair Kruger recessed the Government Oversight Committee at 12:00 p.m.

RECONVENED

Chair Kruger reconvened the GOC meeting at 12:58 p.m.

- **GOC Review of Tasks Assigned to OPEGA re: Clarifying/Enhancing Procurement Statutes, Rules And Policies (In response to OPEGA 2013 Report on Healthy Maine Partnerships)**

At the last GOC meeting the Committee was discussing what the possible options were for clarifying and enhancing some of the procurement guidelines to address issues identified in Healthy Maine Partnerships contracting situation. The GOC voted to introduce legislation that would add a definition of the term contract in the statute that governs State procurement for Executive Branch agencies.

Director Ashcroft referred members to the draft legislation saying she has received input from the Division of Purchases and they are fine with the wording in the draft. The draft legislation adds the definition of contract and that definition is written in a way to make it clear that it encompasses grants as well. The reason to do that is that subsequent statutory provisions and in particular Section 1825-B of Title 5, are related to the requirements for competitive biddings. The term contract is used throughout the procurement statute and by virtue of adding the definition in the definition section it would be making it clear that it also includes grants. Director Ashcroft said she did not think it was absolutely necessary to change the statute because it seemed to be widely accepted that the competitive procurement guidelines do apply to grants as well, but it would be a means of clarifying that to be the case.

The Committee also voted to send a letter from the Committee to the Commissioner of DAFS making recommendations to the Division of Purchases. One recommendation was to make clarifying changes in Rule 110 which is the Rule that they promulgate with regard to procurement. Another recommendation was to add

increased guidance for situations like the one that occurred at CDC to the policies they have on amendments and renewals of contracts, and grant awards. The Director referred the Committee to the draft letter in their notebooks.

Motion: That the Government Oversight Committee accepts the draft legislation to add the definition of “contract” to the State procurement statute Title 5, section 1825-A. (Motion by Rep. Campbell, second by Sen. Johnson, passed unanimous vote 10-0).

- **Quasi-Independent Agencies’ Annual Reports to Legislature**

- **Potential changes to Title 5 § 12023**

Director Ashcroft summarized the Options for Ensuring Joint Standing Committees Review Annual Reports Submitted by Quasi-independent State Entities under 5 MRSA §12023 that was in the Committee’s notebooks. (A copy is attached to the Meeting Summary). She noted that the matrix showing which entities had filed reports has been updated since the last GOC meeting. A Report has now been received from the Maine Technology Institute for 2015 and she also added a column to indicate whether or not each entity was on the Government Evaluation Review schedule.

Rep. Duchesne asked if the Quasi-independent agencies have budget requests that go to the Appropriations and Financial Affairs (AFA) Committee. Director Ashcroft would have to figure out where the budgets do all go, but she thinks not all of them do go to AFA. His thought was that the policy committee would have to do the department budgets and, could review these Annual Reports as part of that so when it goes to the AFA Committee they have some kind of review from the policy committee.

Rep. McClellan noted that there were five agencies reporting to the Education Committee and said they all do.

The Director said she would explore whether the budget process offered an option and report back.

- **OPEGA Budget**

- **Letter to Legislative Budget Subcommittee**

Director Ashcroft said a letter was sent to the Legislative Council’s Budget Subcommittee approving OPEGA’s budget.

- **Response to GOC Questions**

Director Ashcroft provided answers to a couple of questions GOC members had asked at the last meeting. She said there was a total of \$251,075 in unencumbered funds from prior years in OPEGA’s account with \$62,387 of that in the Personal Services line and the remaining \$188,688 is in the All Other line. She said there had also been a question about when GOC members’ expenses get charged to the OPEGA budget. When a member is in Augusta for only a GOC meeting during session, then the expenses listed on their expense forms would get charged to the OPEGA budget. If they are there for some other committee, or for session, they would put their expenses on the weekly legislative expense sheet that is filled out for the Executive Director’s Office. During the interim any expenses and per diem is charged to the OPEGA budget.

Chair Katz asked if the Director knew when the Budget Subcommittee would be meeting. She did not, but will find out.

REPORT FROM DIRECTOR

- **Status of Projects In Progress**

Director Ashcroft noted that not much has changed with the projects in progress. She said the consultant working on the Office of Information Technology project is making good progress and are on track. OPEGA is looking to submit the Information Brief on DHHS Workplace Culture and Environment at the GOC's first meeting in April. OPEGA staff continue to prioritize the Riverview Psychiatric Center review.

NEXT GOC MEETING DATE

The Government Oversight Committee's next meeting is scheduled for March 27, 2015 at 9:00 a.m.

ADJOURNMENT

Chair Kruger adjourned the Government Oversight Committee meeting at 1:20 p.m.