



SEN. CRAIG V. HICKMAN, SENATE CHAIR
REP. JESSICA FAY, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. MIKE TIPPING
SEN. RICHARD BENNETT
SEN. JILL C. DUSON
SEN. JEFFREY TIMBERLAKE
REP. AMY ARATA
REP. H. SAWIN MILLETT, JR.
REP. MARK BLIER
REP. ANNE MARIE MASTRACCIO
REP. MARGARET M. O'NEIL

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
August 21, 2024

Call to Order

The Chair, Sen. Hickman, called the Government Oversight Committee to order at approximately 9:37 a.m.

ATTENDANCE

Senators: Sen. Hickman, Sen. Keim, Sen. Bennett, and Senator Tipping
Absent: Sen. Timberlake, Sen. Duson

Representatives: Rep. Fay, Rep. Arata, Rep. Mastraccio, Rep. Millett, Rep. Blier
Absent: Rep. O'Neil

Legislative Staff: Peter Schleck, Director, OPEGA
Jen Henderson, Senior Analyst, OPEGA
Sabrina Carey, OPEGA Administrative Secretary and GOC Committee Clerk

Others: Jim Billings, Executive Director, Maine Commission on Public Defense Services
Steve Brochu, Director of Audit, MCPDS

Introduction of Committee Members

The members of the Committee introduced themselves.

New Business

(To watch this meeting - the recorded Live Stream can be viewed here: [August 21, 2024 GOC Meeting](#))

Meeting Summary – June 26, 2024

(A copy of this Meeting Summary can be found here: [June 26, 2024 GOC Meeting Summary](#))

The Committee accepted and approved this meeting summary.

Maine Commission on Public Defense Services

Senator Keim raised a point of order regarding proceeding with this agenda item on the basis that it was not properly before the Committee. Following Committee discussion and a ruling from the Chair that the matter would proceed as scheduled, Senator Keim challenged the Chair’s ruling and requested a Committee vote to overrule it. After a brief recess for a caucus of Republican Members, the motion was defeated by a vote of 5-4 (5 Members in favor of overruling the Chair, with 4 Members voting against. Note: [GOC Committee Rule 5](#) provides that the Chair may only be overruled by majority vote of the Committee’s “Membership”, thus 7 votes were deemed required to overrule the Chair. Consequently, the motion failed).

Sen. Hickman invited MCPDS Executive Director Billings and MCPDS Director of Audit Brochu to address the Committee in turn.

Executive Director Billings dispensed with an opening statement in favor of taking questions from the Committee Members. Mr. Billings further stated that his colleague Mr. Brochu would take the lead in responding to questions regarding financial accountability, and that he (Mr. Billings) would focus on answering the other questions shared in advance of the meeting on behalf of the Chairs by OPEGA Director Schleck.

Noting “the grim realities,” Mr. Billings shared that there were 152 total rostered MCPDS attorneys as of the day before, available for court appointment in the entire State of Maine. This included 102 willing to do trial-level work, 34 willing to do child protective custody work, and 35 doing adult criminal cases. Many courts are devoid of any attorneys to appoint from a local roster. Many courts have homicide, “Lawyer of the Day,” and a smattering of other case-type rostered attorneys. For many courts, the rosters are devoid of any attorneys available for several case types. The 152 “opted in” daily overall roster changes daily and is a subset of a larger number of 289 attorneys who have renewed their status with MCPDS as of the day before. There’s a third larger subset of 368 attorneys who were billing MCPDS in March 2024. So some attorneys are no longer “renewed” or “rostered” at this time. Mr. Billings stated that what all this “boils down to” is that there were 834 criminal matters in the State of Maine as of the previous Friday without an attorney appointed to represent an eligible defendant. A list is circulated within the MCPDS and the Judicial Branch, usually three times a week, some “going on weeks, some going on months.” At present there are 96 child protective custody cases in need of an attorney, 11 post-conviction review cases, 20 appellate cases, and a smattering of other case types. As of this past Friday, there were 222 people in custody, charged with a crime in Maine, who did not have an attorney. Some of those also have “probation holds” or other reasons for being held but are nevertheless also in custody without an attorney and faced with new criminal charges. The trends have been “holding steady” since about May 2024, between 800-900 matters on the adult criminal list (without an attorney). It was 250 on January 3, 2024. It does not appear to be experiencing as much exponential growth recently.

Executive Director Billings then shared “the good news”. Since the hourly (\$) rate increase last year, recruitment is up. Monthly new entries into the program have more than doubled. And applicants have more than doubled for specialized cases requiring additional experience and training. A recent emergency rule amendment for these specialized cases created the opportunity for more waivers of certain requirements that were criticized as too stringent. MCPDS had received criticism earlier that it was too hard for attorneys to take these cases. In the month since the loosening, there has been very little response. The emergency rule is set to expire in October 2024, and between now and then, MCPDS will decide whether to make the changes permanent.

Senator Hickman then asked Mr. Billings what was meant by “too stringent” in the previous requirements. Mr. Billings responded that three components of the “Chapter 3” (specialized case types) requirements were “tweaked”, including: previously, the Executive Director could only waive either a. years of experience or b. trial experience (mostly jury trial experience); and previously, another attorney in a waiver-applicant’s firm could not submit a letter of reference; and the third change was to change the years of experience requirement from just being criminal defense practice to allow some years of any criminal experience to count towards the years of experience.

Executive Director Billings also expressed satisfaction with the rollout of the new public defender offices that have been established to date. The offices are initially designed to each cover courts within an hour driving radius and 30 percent of the adult criminal cases in that area. This is based on MCPDS caseload standards and other standards. Staff support levels were set based on American Bar Association principles and guidelines. The first office was sited in Kennebec County and is showing results. Mr. Billings expressed appreciation for the support of the Legislature for this office as well as those in Bangor and Caribou. MCPDS is very pleased with the quality and experience of the candidates that have been hired as office heads (District Defenders). MCPDS has had applicants hired from out of state. Staffing the Bangor office trial attorney positions remains a challenge. Maine has a very high required Uniform Bar Exam score, and one candidate fell short by four points. The Lewiston office is set to open after Labor Day. Based on the need seen in the child protective custody realm, the Rural Defender Unit has been repurposed to a parents’ counsel unit, but the “RDU” model will not be used in which attorneys drive from one end of the state to the other. Attorneys will be hired where they are and work out of the new brick and mortar public defender offices and serve the nearby courts. There is a Commission meeting on Monday, August 26, 2024, at which the next budget proposal (Fiscal Year 2026) will be discussed, voted on, and then submitted to the State Budget Office thereafter. Among the new budget initiatives will be to seek to fund the three remaining defender offices to be established, for York, Cumberland, and “Mid-Coast”, and to increase the number of parents’ counsel that can be hired. The Fiscal Year 2026 goal will be to increase public defender capacity from one-third coverage of adult criminal cases to one-half. The goal is to get to a hybrid system in which the defender offices cover one-half and one-half handled by private attorneys appointed through MCPDS. It is too soon to know if this will be “enough” and funding of the three additional offices will create a “remarkably different place” than where matters stand now.

Senator Hickman thanked Executive Director Billings for the overview, and asked Mr. Billings if he would like to address any of the other questions sent in advance by OPEGA Director Schleck on behalf of the Committee Chairs.

Executive Director Billings referred to information contained in the documents submitted to the Committee, including an interrogatory answer in pending litigation. Mr. Billings also discussed his efforts to engage in outreach and recruiting with bar associations, the Maine Law School, and through travel out of state. Mr. Billings also described efforts to hire interns and expand this over time. Another key benefit of the defender offices is to encourage those who want to do this work to “stay in Maine” and not leave for this work elsewhere. Not all newly graduated lawyers are prepared to open their own private office.

Executive Director Billings also explained that there is no untapped pool of attorneys who are qualified and capable of this type of work somewhere who can take more of these cases now. The feedback Mr. Billings has received is not that the rules of the MCPDS are too stringent, but that personal circumstances, including the aging of the established bar, the higher rates available for private “retained” engagements, are diminishing the available ranks and perhaps two generations of potential attorney recruits have been lost due to the lack of an established public defender system. There are also 3,000 more felony cases pending in July 2024 than there were in July 2019. Current appointed attorneys are having a harder time clearing the cases through the courts, and this limits the intake by them of new matters. A recent survey by MCPDS of current

appointed counsel disclosed that three quarters were “burned out” and “overwhelmed.” Individual personal capacity limits have been reached.

Executive Director Billings summed up by stating there are only three sources of more attorneys for this type of work: 1. Someone who is already here and not doing it, who can take it on; someone from out of state; or a new law school graduate. Mr. Billings also emphasized that the message from Maine State government needs to be that this new public defender structure is not going away, it is going to be expanded, and that there will be a source of jobs established and available in a predictable, orderly fashion, and that this is a valid career choice. The Legislature can help with headcount despite the “sticker shock”. There is also an unquantified liability from past attorney services already performed, but this should be able to “tail off” as the defender offices come further online.

Senator Hickman again thanked Executive Director Billings for his overview, and then asked if Members had any additional questions.

Representative Arata referenced how the Committee had understood that certain efficiencies established during the COVID-19 pandemic have been “done away with”, and attorneys felt that their time was not being used appropriately. Another issue that came up was that clients were very difficult to work with, and that information on the home addresses of attorneys were being given out and clients would show up at attorneys’ homes. Executive Director Billings confirmed that MCPDS does not give out such information, but rather, cited the realities of ready resort to the Internet in which a host of information is available online of this nature, if someone is determined to find it. Mr. Billings also indicated that MCPDS publishes to correctional facilities the phone numbers provided by attorneys for contacting them, and perhaps email addresses. That information is being maintained by the facilities due to the requirements to avoid recording attorney/client phone calls. Mr. Billings agreed that the return to more in-person proceedings (in contrast to virtual) has been a factor and it has caused frustration, and this has been shared by MCPDS with the Judicial Branch. Mr. Billings stated that there may be limits on the ability to influence individual judge decisions regarding in-person v. virtual. Mr. Billings also acknowledged that some proceedings are appropriately or necessarily held in-person. MCPDS has asked the Judicial Branch to try and be as flexible as possible, especially in areas where there are so few or no attorneys.

Senator Hickman then turned to the prior OPEGA report and related financial operational matters. Before turning to MCPDS Audit Director Brochu, Executive Director Billings stated that it is not the case that “cracking down” on financial practices have been the cause of the shortfall in available attorneys. There is some tension between “quality” and “quantity”. MCPDS has also loosened the 90-day cutoff for submitting vouchers (despite the fact that attorneys generally do and should be billing monthly). There is now a staggered reduction in payment if a voucher is submitted between 90 days and 6 months.

MCPDS Audit Director Brochu emphasized that it was MCPDS’s ongoing effort and plan to achieve the goals for improvement set forth in the prior OPEGA report on MCPDS financial practices. Mr. Brochu brings his 25 years of experience as a criminal defense attorney to the role. A key initiative has been to “improve the data” and MCPDS is entirely dependent on the attorneys for that data. This area has improved greatly over the last two and one-half years. Mr. Brochu stated that there is now more room for “more carrot”, “less stick”. Mr. Brochu referenced the “reduction schedule” cited by Mr. Billings (the decreasing scale of payment the later the voucher is submitted). Monthly billing is the desired outcome. Regarding “getting quality data”, MCPDS has been working for improvement in timeliness and granularity. This is not just a cost-savings initiative but there is an emphasis on accuracy. The current (original) case management system is in the process of being improved. Work remains. Budget requests for additional staffing should help, if approved, including for a Certified Fraud Examiner. There has been a protracted Request for Proposals (RFP) process for a new system. The current system is limited to billing and not really case

management. MCPDS has also been using an off-the-shelf product on an interim basis for the public defenders.

Senator Hickman asked Executive Director Billings if he wished to comment on the recent Federal court decision on Oregon’s system of public defense. Mr. Billings cited ongoing litigation as a reason for limiting his comments but stated that Oregon’s approach (“roadmap”) to addressing certain issues in that state is being considered, including the possibility of paying “differentials” for taking on certain kinds of cases. This is not a short-term, “easy fix”.

Senator Keim cited the fact that the Maine Bar exam is so stringent in its passing rate requirement, and that the problem is multi-faceted. Senator Keim also cited the events in Auburn in which a released defendant committed new violent crimes resulting in a death. Senator Keim observed that the courts seemed to blame MCPDS, and that she “had a lot of thoughts around that.”

Senator Keim asked Executive Director Billings if he agreed with the Governor’s recent published statement that the courts had inherent authority to appoint attorneys independent of MCPDS. Mr. Billings said he does not believe that is the law, after the statutory enactment of MCPDS. Mr. Billings also cited the conflict concerns about having the judge both appoint a defense attorney and later sentence the defendant. Mr. Billings further stated that he received numerous calls expressing concern and that he was concerned that lawyers would then even refrain from serving as a “Lawyer of the Day” for fear of being involuntarily appointed to a case.

Senator Keim stated that she would like to see more focus on the accountability of the courts. Mr. Billings said more could be done by the courts to make Dispositional Conferences more effective. There are issues with timeliness of plea offers, attorney preparation, completion of discovery. Mr. Billings cited the settlement conferences being held in civil cases, and how that could be brought to bear on the criminal side, with judges experienced in such cases mediating more resolutions. Mr. Billings also believes that Dispositional Conferences should be organized by subject matter, e.g., all OUIs addressed in a single docket in a geographic region, and more willingness of judges to “push” attorneys.

Senator Keim, citing the crisis at hand, asked Executive Director Billings how often the courts, prosecutors, and MCPDS meet to discuss what if any changes need to be made. Mr. Billings meets regularly with the Trial Chiefs and prosecutorial representatives. Some meetings have expanded to include legislators, members of the Governor’s staff, the Attorney General’s office, members of the private bar, and others. But the bad news is that “there really no easy fix.” Mr. Billings nevertheless pressed for incremental changes. Mr. Billings suggested that a prior unsuccessful effort to decriminalize certain Class E offenses (the lowest class of misdemeanors) could be tried again. \$2 million in MCPDS attorney fees were for Class E cases last year. Rationing, triage, and intelligent choices should be happening, including on the charging side.

Senator Keim observed that efforts at reform have revolutionized the approach of MCPDS, but that she has not seen anywhere near these types of changes happening in the Judicial Branch. Senator Keim stated that she feels that the Judicial Branch does not recognize that there is a crisis, including in the way court operations, including scheduling, occurs. Senator Keim stated that it is well past time that the courts are “held under a microscope”.

Senator Keim also cited a news report that the Governor planned to meet with MCPDS and asked if that had happened. Mr. Billings replied that MCPDS Chair Joshua Tardy had met with the Governor at the end of July 2024.

Senator Keim agreed with Executive Director Billings that more could be done to look at what matters pass through the courts. Senator Keim indicated that it was appropriate for the Legislature to press for answers from the Judicial Branch.

Senator Hickman thanked the MCPDS representatives, including in advance of any possible requests for follow up, including because an “All Hands On Deck” approach was warranted and “every tool in our toolbox” should be used, and that this is a long-term process. Senator Hickman also invited Mr. Billings to contact OPEGA Director Schleck, as needed.

Work Session for the Maine Shipbuilding Facility Investment Credit

Sen. Hickman called the Committee to order again at 11:17 AM and introduced the topic of the work session regarding OPEGA’s report on the Shipbuilding Facility Investment Credit.

Rep. Mastraccio moved to endorse the report in full.

Rep. Fay seconded the motion.

The motion passed unanimously of those 8 Members present for the vote. Sen. Duson registered a yes vote within the required time limit.

Senator Hickman invited a motion regarding transmittal of the report to the Taxation Committee.

Rep. Mastraccio moved to transmit the OPEGA Report: Evaluation of the Credit for Maine Shipbuilding Facility Investment Credit to the Taxation Committee.

Rep Fay seconded the motion.

The motion passed unanimously of those 8 Members present for the vote. Sen. Duson registered a yes vote within the required time limit.

OPEGA Proposal Regarding Public Law Chapter 417

Senator Hickman introduced the topic and invited Ms. Henderson to present the proposal to the Committee. Ms. Henderson told the Committee that Public Law Chapter 417 repealed the tax expenditure reviews for the expedited category of tax expenditures, but statute maintains the expedited category of tax expenditures in the GOC’s categorization process for tax expenditures. She explained that OPEGA recommends that the Expedited Category be removed from statute for the purposes of categorization and also, that all the incentives currently in the Expedited Category be moved into the No Review category.

Rep. Mastraccio noted that the expedited category does not include any business incentives. She asked, “What are the general types of expenditures within the expedited category?”

Ms. Henderson said there are 91 expenditures currently in the expedited category. Many of them are sales tax exemptions. Some have very small estimated fiscal impact, and it was originally thought that a full evaluation of them was not an efficient use of resources.

Sen. Bennett asked how many remain in the full review category.

Ms. Henderson said she would find out, but her recollection was that it was between 30 and 40.

Rep. Fay asked if an expenditure is put in the “no review” category does this mean it will never be reviewed? Ms. Henderson said that the proposal only removes the expenditure from the cyclical review process. It does not mean that the GOC cannot require OPEGA to review any expenditure in the “no review” category by recategorizing to “full review” or by directing OPEGA to perform a one-time review of an expenditure at any time. Ms. Henderson continued: another path through which an expenditure categorized for no review could come under review is via the newly enacted provision in Chapter 417 that allows the Taxation Committee, with the approval of the GOC, to request that OPEGA perform up to two limited 30-day reviews of tax expenditures per session. Lastly, she said that OPEGA will continue to monitor changes to tax expenditures including their fiscal estimates. In the annual categorization process, OPEGA will continue to bring these changes to the attention of the Committee.

Rep. Mastraccio noted that the information about the expenditures being recommended for movement from the expedited review category to the no review category will still be included in the Red Book (Maine State Tax Expenditure Report) that MRS provides to the Tax Committee biannually, so the Tax Committee will still have these items brought to their attention and can review them periodically. Having these items brought before the Legislature periodically in this way is important, but that the items don’t need a cyclical, required review by OPEGA.

Sen Tipping asked how many of these expenditures have been reviewed in this cyclic process. Ms. Henderson said all 91 have been brought before the Taxation Committee for expedited review with the exception of new expenditures. Any new expenditure will be put forward to the GOC in the annual review process for categorization.

Sen. Tipping asked whether there is a revenue loss threshold for the “no review” category.

Ms. Henderson said the original threshold was \$50,000; however, over time this became a less strictly held rule. OPEGA applied judgement in that an expenditure moving from say \$50,000 to \$60,000 might stay in the no review category, but if an expenditure moved from \$50,000 to \$100,000 (effectively doubling), OPEGA would likely bring that before the GOC. Ms. Henderson noted that OPEGA would be happy to apply a consistent rule to the fiscal impact judgments if the Committee has a preference.

Sen. Bennett moved to accept the OPEGA proposal with the proviso that the Committee also plan to review the list of expenditures up for full evaluation and determine whether any of those could be recategorized.

Rep. Mastraccio seconded the motion.

Rep Mastraccio suggested that the Members refer to the “Proposal for Legislative Review of Maine State Tax Expenditures developed by the Office of Program Evaluation and Government Accountability pursuant to Resolves 2013, Chapter 11 – March 2015” for historical information regarding why the GOC is the appropriate Committee to do this work and why OPEGA is the office doing this work.

Sen. Bennett asked for the report Rep. Mastraccio referenced to be distributed to Members of the Committee. He noted he had been part of the Task Force to Review the Tax Expenditure Review Process in the 130th Legislature and said he would like the Committee to consider whether OPEGA and the GOC are the proper entities to be conducting tax expenditure reviews.

Sen. Hickman raised the potential for an agenda item for one of the 131st GOC’s final 3 scheduled meetings to review the list of expenditures categorized for full review and discuss any other matters related to the process.

Ms. Henderson noted that since statute requires the GOC to categorize tax expenditures every October, that upcoming annual categorization might be an appropriate time for that agenda item.

Sen. Hickman and Sen. Bennett agreed with that approach.

Sen. Hickman clarified that the motion before the Committee was that they accept the proposal and send a letter to the 132nd Government Oversight Committee recommending that Committee submit the draft bill language proposed by OPEGA for consideration to the full Legislature.

Rep. Millett said somebody should be reviewing the expenditures with larger fiscal impact. He screened the 91 currently "expedited" expenditures on the list looking for those with fiscal impact of \$100 million or more. He found a half dozen with that fiscal impact and suggests that either the Taxation Committee review these large expenditures or that they be added to the full review cycle when the GOC recategorizes the expenditures.

Rep. Mastraccio noted that the proposed bill will go in front of the Taxation Committee in the next Legislature where it will have a full vetting and all of the questions Members are raising now will be discussed.

Sen. Hickman said it was his understanding that the Committee could also change the categorization of some of these, if desired, at the Committee's next categorization meeting. He asked Ms. Henderson to confirm.

Ms. Henderson confirmed that the Senator was correct and noted that the Committee could include in its motion today a provision to recategorize to full review any expenditures that the Committee is concerned about moving to the no review category. She stated that OPEGA did consider moving some of the expenditures currently categorized for expedited review to the full review category. She said the proposal to move them all to no review was based largely on considering how to provide the most value to the Legislature with the limited staff resources OPEGA has to perform this work, noting that only 2 additional FTEs were approved for it when this tax expenditure review was added to OPEGA's statute.

Rep. Millett said he still thinks the half a dozen or so warrant a full review by someone. There is a billion dollars of exemption in just those 6 and they should be looked at. The rest of the 10 pages could easily go in the no review column.

Rep. Mastraccio suggested that the Committee can approve the proposal and send the statutory change on to the next Legislature, and in the meantime, the Committee can recategorizing those expenditures currently in the expedited review category as desired at its normal categorization discussion in October. She noted that the reason this tax expenditure review process came to be is that in the past when bills came before the Legislature about these expenditures there was no data to demonstrate why a program should be continued or defunded. It was about making sure there was data that Members could turn to in considering these bills.

Sen. Bennett said the major issue is about what staff should undertake this work. He agreed that Members need access to good, consistent data, but the issue is about the Legislature not staffing and resourcing itself appropriately to do its work. He suggested the 2 FTEs should be doing OPEGA non-tax work and 2 more FTEs should be added to OFPR to do the tax review work. He suggested that as the current Government Oversight Committee's work is coming to a close, he would like to have continuity of the conversation for the next Committee.

Sen. Hickman asked the Committee whether there are particular expenditures that should be flagged for further discussion at a future meeting.

Rep. Fay asked Ms. Henderson to clarify whether OPEGA needed those flagged now, or if Members could have time to review the list and get back to staff.

Ms. Henderson clarified that OPEGA only needs to know that the Committee would like to consider the list further, and with that, will set it aside for later discussion and not move any expenditures yet.

Sen. Hickman restated that the motion before the Committee was to accept OPEGA’s proposal for suggested legislation transmitted to the 132nd Government Oversight Committee.

The vote was held and the motion passed unanimously of the 9 Members present. Sen Duson registered a “yes” vote within the allotted time.

After the vote, Ms. Henderson asked the Chair’s permission to provide the Committee with very brief updates on three matters related to tax expenditure reviews. Senator Hickman invited Ms. Henderson to proceed. Ms. Henderson noted that Public Law Chapter 417 also directs the OPEGA Director to consider whether there are other opportunities to improve or make the process more efficient. She stated that the office is working on this matter now and will be bringing a proposal to the Committee by November of this year. She invited Members to share any ideas they may have about this matter with staff. Ms. Henderson also notified the Committee that the revised report on OPEGA’s evaluation of the Paper Manufacturing Facility Investment Credit would be ready for presentation to the Committee in September. Finally, Ms. Henderson shared that OPEGA had received an impact award from NLPES for the report on Maine Incentives that had been presented to the Committee during the last session.

Proposal by Representative Fay for an OPEGA Review of Procurement

Senator Hickman introduced the next topic and invited the committee to discuss a proposal by Representative Fay by which the committee might direct OPEGA to conduct a review of procurement. Senator Hickman requested that Director Schleck summarize the results and agency response to OPEGA’s prior report on the same subject.

Director Schleck briefly provided an overview of materials provided including Representative Fay’s request, the initial response from DAFS, OPEGA’s prior report, a summary of the findings and agency follow-up from that report, and an additional follow-up from DAFS by way of memo August 19th. Director Schleck flagged for the committee that the Commissioner and others from DAFS were not available for this meeting, but might be available in September, and there may be a desire for them to talk to the committee further as the committee considers whether to direct OPEGA further. Director Schleck reminded the committee of the options for directing OPEGA’s work.

Director Schleck provided a brief overview of the prior OPEGA report findings and the August 19th DAFS memo and flagged for the committee that the DAFS Procurement Policy Manual is currently undergoing a periodic 10-year review due at the end of fiscal year 2025 and how this timing might work with a potential OPEGA review.

Senator Hickman made an information request about whether these are the only cooperative agreements, referencing other potential cooperative agreements in Title 7 and potentially Title 12, and whether the committee could get a complete list.

Representative Fay noted that this memo from DAFS was helpful and appreciates how a review from OPEGA may dovetail and be helpful with the DAFS review. Representative Fay said she was struggling with defining “procurement,” and that there have been a few pieces that have jumped out, specifically the involvement of OIT in the process. Rep. Fay said it would be important to understand what role they play. Representative Fay also noted there are other topics, but that she was aware this could get unwieldy.

Representative Mastraccio said that she would like to have DAFS come to committee and that she has questions for them, for example regarding the issue of the non-emergency medical transportation contract. Representative Mastraccio noted that she doesn't think she'll know the scope until hearing from DAFS, and that having the Department in front of the committee would be helpful.

Senator Bennett noted his interest in delving further into the prior OPEGA report finding #2. Senator Bennett expressed concern with and requested to know how often these conditions have been waived, and was particularly concerned that, with the exception of the Attorney General, all of the people on the SPRC serve the Governor. Senator Bennett requested some data on loopholes around the guidelines and the procurement process, how often they've been utilized, and in what specific cases they've been utilized. Senator Bennett also said that he shared Representative Fay's concerns regarding the definition of a procurement and the monetary levels involved.

Senator Tipping noted his concern with what was not addressed in the memo – the provision of the non-emergency medical transportation contract and shared his concerns with that issue and how decisions were made regarding that contract. Senator Tipping asked about submitting questions to DAFS for a September meeting, including: what do they consider a large, impactful RFP; does DAFS review all RFPs prior to release and what does that look like; how does the State ensure an experienced review panel, how it is put together, and how they evaluate these proposals; and other questions probably better posed directly to DAFS.

Senator Hickman added to that list of questions: what role if any, do lobbying firms and/or their representatives play in the awarding of these contracts.

Representative Arata echoed the concerns raised about lobbying and the role of OIT: are they being consulted, are they studying how various software works in other States and noted some of the software that is not working as well as it should.

Senator Keim raised the issue of incredibly slow rollouts of what were supposed to be an online system in the courts, nepotism, and a lack of oversight.

Senator Tipping noted the difference between local agencies and the larger for-profit corporations in getting contracts, which may be a subject for questions as well.

Representative Fay noted that there are questions about how things are now, and said it would make sense to ask DAFS to come to the committee's next meeting to address some of these questions. Representative Fay requested that committee members send any additional questions to Director Schleck, but noted the importance of looking at the issue in a holistic way, and the goal that the entire procurement system works in an equitable way for the people that are providing services to state government, and that contracts give the State as much value as possible and that the way they are being awarded is equitable. Rep. Fay noted that given how big the conversation can get, that Director Schleck and DAFS can hone the scope in a way that will be productive.

Director Schleck confirmed that committee members may send questions to him so that DAFS may be prepared for the next meeting and requested that those questions be sent to him within a week, if possible.

Senator Hickman said that the committee would be taking no action at the moment because the committee wants more information from DAFS and confirmed that Director Schleck has approval to invite DAFS to come before the committee.

Director’s Report

Director Schleck noted the next meeting date, and that the Paper report and the 4th of the case file reviews will be ready for the next meeting.

Next GOC Meeting Date and Planning

The next GOC Meeting was scheduled for September 18, 2024.

Adjourn

Sen. Hickman adjourned the Government Oversight Committee meeting at 12:24 p.m. on a motion by Rep. Fay, seconded by Rep. Mastraccio. The vote was unanimous in favor of adjournment.