



SEN. ROGER J. KATZ, SENATE CHAIR
REP. ANNE-MARIE MASTRACCIO, HOUSE CHAIR

**MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE**

MEMBERS:

SEN. NATHAN L. LIBBY
SEN. PAUL T. DAVIS, SR.
SEN. BILL DIAMOND
SEN. GEOFFREY M. GRATWICK
SEN. THOMAS B. SAVIELLO
REP. JEFFREY K. PIERCE
REP. JENNIFER L. DECHANT
REP. MATTHEW A. HARRINGTON
REP. DEANE RYKERSON
REP. PAULA G. SUTTON

**MEETING SUMMARY
October 3, 2018
Accepted November 2018**

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:02 a.m. in the Burton Cross Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Davis, Sen. Gratwick and Sen. Saviello
Joining the meeting in progress: Sen. Libby
Absent: Sen. Diamond

Representatives: Rep. Mastraccio, Rep. Pierce, Rep. Rykerson and Rep. Sutton
Joining the meeting in progress: Rep. DeChant
Absent: Rep. Harrington

Legislative Officers and Staff: Danielle Fox, Director of OPEGA
Matthew Kruk, Principal Analyst, OPEGA
Scott Farwell, Senior Analyst, OPEGA
Amy Gagne, Analyst, OPEGA
Ariel Ricci, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves.

NEW BUSINESS

None.

UNFINISHED BUSINESS

• OPEGA Information Brief on Sales of Timber Harvested From Public Lands

- Additional Information, GOC Questions for Invited Attendees, Continued

Sen. Katz said OPEGA has presented their Information Brief on Sales of Timber Harvested From Public Lands and the GOC held the public comment period at their September 27th meeting. The Committee heard from a number of people they had asked to appear. Today's meeting is a continuation of that work for the purpose of asking Director Denico, who could not be at the last meeting, questions.

Sen. Katz said the purpose of this inquiry is to gather additional details and a further understanding of the events, communications, explanations and impacts described in OPEGA's Information Brief on Sales of Timber Harvested From Public Lands: February 2018 Diversion of Spruce and Fir Deliveries. More specifically, what role, if any, the Administration had in the February 2018 decision to divert deliveries of spruce and fir harvested on Public Lands in the Western and Eastern Regions of the State from one set of sawmills to another sawmill. Who made the February 2018 decision to divert wood, why was that decision made, what if any evidence or information was the February 2018 decision based on and when and how was the decision communicated to the impacted sawmills, Stratton Lumber (Stratton) and Pleasant River Lumber (PRL) and Moose River Lumber (MRL). Again, the purpose of this inquiry was not to debate the subject of saw wood tariffs or to consider the appropriateness of timber harvested from Maine Public Lands being sold to mills being operated in Canada. Today the Committee has only one witness, Mr. Doug Denico, Director of the Maine Forest Service.

Sen. Katz said the laws governing this inquiry include the following statutes: Title 3, Chapter 37 which governs the GOC and OPEGA in their roles in oversight of government agencies and programs. Title 3, Chapter 21 which governs the Legislative Investigating Committee Statute and Title 1, Chapter 13 which is the Freedom of Access Act. Because the GOC voted to issue subpoenas for this inquiry they are required to abide by certain provisions in the law, most of which will be addressed by a proposed order of procedure. The order of procedure is that all proceedings and testimony will be held in public session and will be broadcast over the internet and available to televising and filming as is normal protocol and required under FOAA. The witness may submit written comments if he wishes prior to his testimony being taken. The witness will be permitted to make any introductory comments in response to OPEGA's Information Brief if he wishes to do so. The witness is subject to subpoena so will be asked to take the oath prior to the taking of his testimony. All questions of the witness will come from GOC members or Committee staff. Any staff questions will be posed through the Chairs or Leads unless the Chairs direct otherwise. There will be no questioning of witnesses by other witnesses or their counsel. After all testimony is taken, the Committee will provide opportunity for the witness to offer further, or clarifying, information.

Motion: In accordance with Title 3, Chapter 422, I move that the Committee approve the orders of procedure as outlined by the Chair. (Motion by Chair Mastraccio, second by Rep. Rykerson. Motion passed by unanimous vote of 10-0.) (Rep. DeChant voted on the motion when she arrived at the meeting in accordance with the GOC's rules.)

Motion: That the Government Oversight Committee moves to also place individuals asked, not subpoenaed, to the meeting under oath. (Motion by Sen. Katz, second by Sen. Saviello)

Sen. Katz advised Director Denico that he may ask questions of the Chair about the proceeding and if he does not understand a question posed to him to please ask it to be clarified. He advised that Director Denico will have opportunity to make additional comments after testimony has been received.

Sen. Katz swore in Director Denico and then asked him to introduce himself.

Doug Denico said he is the Director of the Maine Forest Service. For the last 4 years he has supervised the work done on Public Lands.

Rep. Pierce asked if Director Denico agreed or disagreed with OPEGA's report. Director Denico said he agreed with most of it, but there were a few places he is not in agreement with. He thought OPEGA did about the best job he has ever seen of green folks coming in, seeing what the Forest Department does and being able to put it down on paper and making it as clear as they did. The Director referred to page 2 and 10 of the report. OPEGA did not understand the quickness of making decisions around selling wood or the lack of having more data available. In other parts of the report OPEGA said the Department did have a good system, particularly on contracting. He said one point OPEGA missed is how quickly they have to act to situations. If you are going to be effective you have to make a decision quickly and it doesn't speak well for having a prolonged process that 7 people have to sign off on and a bunch of contracts have to be written. The Director said he didn't know if OPEGA caught the sense of urgency that is needed.

Sen. Saviello referred to November 2017 when Stratton needed wood and asked if Director Denico knew who Stratton told they were short on wood. Director Denico said as he recalled that first request came through the Regional Manager, Pete Smith. Mr. Smith asked him if he had any issues with switching some wood between Stratton and PRL/MRL. The wood was to be divided, but Stratton was asking for it all. Director Denico said he was asked if he concurred with doing that. Sen. Saviello asked if Stratton offered more money for the wood. The Director said they did and thinks that is an important point because OPEGA's report mentions money that is offered to the State. He said the State does not demand an amount and their negotiations are pretty soft because they do not think in their capacity they should be leveraging mills. Sen. Saviello asked if PRL/MRL were given the opportunity to match that money if they wanted to continue to get the wood. Director Denico remembered the switch of wood was amicable with the Brochu folks.

Sen. Saviello said ultimately the decision in November to send the wood to Stratton was made in the field with Director Denico's approval. He asked if the diversion of wood can be done by the regional foresters without going to Director Denico for approval. Director Denico said although he has not laid any law down, quite often the Regional Foresters come to him with any changes and said he prefers it that way because he wants to be the person accountable for it. He said price does not mean much to him. Stratton was in trouble and needed help. When a mill is in a crisis situation you don't leverage them for money in the public sector. Sen. Saviello said in this case Stratton talked to the regional forester about needing wood, more money was offered, and it was an amicable agreement with both Stratton and PRL/MRL. Director Denico agreed.

Sen. Saviello referred to January and February 2018, when deliveries were going as planned and then on January 29 or February 1, there was a discussion that took place with the Brochus. He asked if Director Denico could describe the discussion because from his letter it seems as if it was a friendly conversation, but at the last GOC meeting, the Brochus and Rich Smith said it was a different kind of conversation to start. Director Denico said it was the 29th because he was coming back from inspecting the Telos operation. He received a call from a friend asking if he was leaving Public Lands. The Director said this was the 4th or 5th time he had been asked that question by people that work for him. If the rumor that he was leaving his job was out there, that is not good for morale, but he could not figure out who started the rumor. His friend told him that information had passed through the Brochus and Rich Smith. He wanted to get the rumor out of the way so when he first got to the Brochus he met Rich Smith and asked about the rumor. Director Denico told one of the Brochus that he had just come from Telos and they were cutting some nice spruce and fir. He and the Brochus went into Mr. Smith's office and the Brochus to talk about the Telos wood. Director Denico said the rumor was that he was leaving for another job and when the conversation started he was upset because his staff were hearing the rumor and he didn't want the Governor to hear something like that. There was no swearing and screaming, but he was perturbed. However, the meeting ended on good terms. They discussed wood and the Brochus asked Mr. Smith why they weren't getting the Telos wood. Mr. Smith said he had looked at getting the wood in every way possible and said he didn't see how they could afford to pay the money. Director Denico said what he didn't understand was that the Brochus were taking wood from Baxter and you could almost throw a snowball from where they were cutting wood on Baxter and where the State was cutting on Telos. The price differential was \$4 a ton. He said the Telos wood was going to a Canadian

mill and if a Maine mill needed the wood and can make the price come anywhere near equivalent, then that wood is sacrificed back into Maine. It is that simple stated Director Denico.

Sen. Saviello asked if the Director knew what percentage of the wood from Baxter goes to the Brochus' wood supply. Director Denico said zero right now. Sen. Saviello asked what percentage went to them last winter. The Director said in the summer they sent quite a bit of the wood to D & G, which is along the border. He thought the Baxter wood was getting on a train in Millinocket and then going over to Jackman. Most of the wood that comes from Telos or Baxter goes to MRL because they put it on the railheads in Millinocket. The wood can also be off loaded onto a small truck and sent to PRL. Sen. Saviello noted that was multiple handlings of the wood. Director Denico said the Brochus did not take the bait and try to negotiate or offer a price, so that opportunity was gone. He did not think it was his job to start a negotiation session on Telos wood. The Brochus had been offered the wood in the fall and they never got back to the State on price. He had just come from Telos and that wood was fair game, but the Brochus did not open up any discussion with him. Once Mr. Smith said the wood was too expensive, that seemed to be the end of the discussion, according to Director Denico.

Sen. Saviello asked if Mr. Smith, or the Brochus, had discussions with the Foresters about the Telos wood. Director Denico said there was quite a bit of discussion. The State asked them twice if they were interested in the Telos wood, but never received an answer. The State sent another letter in December asking for a price from them and did not receive a response. Sen. Saviello asked if the Brochus or Mr. Smith had responded verbally to the Forester. Director Denico said he had not heard that they responded at all about Telos.

Sen. Saviello referred to February 7, when the wood moved from MRL/PRL to Stratton and asked why that happened. Director Denico said for him it hinged on the inventory position that Stratton was in. In October and November, it became obvious that they were in dire straits. At one point in November, Stratton had two weeks' worth of inventory and it was agreed that Public Lands would give them more wood. Then in February, it turns out they are still in dire straits as he heard Stratton had five weeks of inventory.

Sen. Saviello said in November Stratton formally asked for the wood. He asked if Stratton formally asked for the wood in February. Director Denico said he considered the ask in November the same thing. They asked in November and the State gave them some wood so they would have just been repeating themselves if they asked again in February. He did not see any reason why they would need to ask again. Sen. Saviello said Nicolas Fontaine recalled talking with Director Denico at a Forestry reception and Mr. Ryder had said anytime he talks with anybody, he says he needs more wood. Other than that conversation back in November, nobody asked Director Denico for more wood. Sen. Saviello wanted to know if Director Denico just extrapolated from that discussion that Stratton needed more wood in February. Director Denico said someone mentioned to him that at the last GOC meeting Mr. Ryder said he met with him, but he could not recall that meeting. It is possible a meeting took place, he just didn't remember it.

Director Denico said from reviewing paperwork from Stratton he found out that Stratton had started the year 2017, 8 million feet behind in their inventory. So, it is no wonder they were having a problem in October and November. Sen. Saviello stated for clarification that: none of the Foresters came to the Director with requests from Stratton for more wood; nobody offered more money for the wood; and that Director Denico made a decision based on what he had interpreted was inventory in the mill to make the change of where the wood was delivered. Director Denico agreed with that statement. Sen. Saviello asked if anybody communicated with the Brochus about the change. Director Denico said when he stopped into the Brochus on the 29th, they talked about not wanting any wood, so no he did not call the Brochus to tell them he was going to divert the wood to Stratton. Sen. Saviello referred to what Mr. Smith and Mr. Brochu testified to at the last GOC meeting, they got calls from contractors and stumpage dealers that were told to take the wood someplace else and when they called the Foresters they did not have any idea why the move was made. Director Denico said he made it very clear to everybody that it was his decision because at that time of year he knew there would probably be concern and he didn't want the Foresters or Regional Managers to have to get chewed on for any reason that was not their doing. He was the one who made the decision on the input he had. He said he did get a call from one contractor wondering how they were going to take care of off-loading. He also got a call

from the Brochus around the 12th. Director Denico said he explained to the Brochus that Stratton was still in trouble and the wood was not going to Canada. The Brochus were perturbed because they heard rumors that the wood that was diverted was going to Canada and when he told them the wood was not going to Canada, it was going all to Stratton they seemed to be perfectly fine with it. Sen. Saviello sought to clarify the comment that the Brochus were okay with the diverted wood going to Stratton. Director Denico said as soon as the Brochus found out the wood was not going to Canada there seemed to be a real change on the phone. Sen. Saviello asked if the Brochus ever asked for the wood back. Director Denico said absolutely. Sen. Saviello remarked that if the Brochus were happy with the wood going to Stratton, then why would they ask for the wood back?

Rep. Mastraccio stated her understanding that the Director met with the Brochus a few days before the wood was diverted to Stratton, so he knew he was not going to be giving the Brochus the lumber, but he did not tell them because he did not want to have that discussion. Director Denico said Rep. Mastraccio heard that incorrectly. He said that when he had the discussion with the Brochus he told them what was going on at Telos, but he had not yet made up his mind about wood deliveries because there was still data coming in. Rep. Mastraccio said Director Denico had based his decision to divert wood on the request that was made before 2018. She said at the last meeting Mr. Brochu said PRL/MRL's needs were as dire as any other mill. She said Director Denico said he based his decision to divert the wood on what was conveyed to him by Stratton back 2017, not in January and February 2018. Director Denico said he would not have made that change if he didn't find out what their inventory situation was and that was after his meeting with the Brochus on January 29th. Rep. Mastraccio asked when he found that out. The Director said after the 29th. Rep. Mastraccio said the GOC does not have any information that says where that happened. Director Denico said Stratton had gotten rid of 8 million board feet of inventory in 2017 from 2016. That information is not anywhere, you will not find it anywhere and thinks OPEGA has gone nuts trying to find it. He said another thing we don't find, and he thinks Pete Smith told him, again, this is after the 29th, that Stratton only had 5 weeks of wood left. Rep. Mastraccio said all the mills were in dire need. The Director said there were differences.

Sen. Katz said he understood that, at this meeting, that one of the major reasons that went into the Director's decision to divert the wood to Stratton was his realization from Stratton's reporting and that they were actually understating the dire straits they were in. Director Denico said when he found out that they ended the year with about 8 million feet less than they had the year before that was an indication and it was no wonder they were in bad shape in October. Sen. Katz said that information came to the Director January 29 and a week or so later he made the decision to divert the wood. Director Denico said there were a lot of things that happened in that week. Sen. Katz asked if that was when the information regarding their inaccurate reporting came to him. Director Denico said that is what he recalled. Sen. Katz asked if that was an important factor in the Director's decision to divert the wood to Stratton. The Director said it was.

Sen. Katz said that in reviewing what Director Denico had submitted to the GOC dated May 3 in response to questions is a 5 page single spaced summary of what happened from his perspective. Sen. Katz said he did not see anything in the detailed summary of what happened that suggests that the information he came into possession of about Stratton's under reporting of their dire condition played any role in the Director's decision to divert the wood. Director Denico said that information is not in his summary and it is not because when he found out that Stratton had come before the GOC and said they had some discussion with him he started thinking of what discussions could they have had. He then recalled that probably he had to have met them at the Forest Product Council meeting. Sen. Katz said that is not his question. Director Denico said the information is not in his summary because he did not remember meeting or talking with Stratton and did not recall the discussion. Sen. Katz asked if the Director was saying that at the Forest Product Council meeting he discussed with Stratton their underreporting of their condition. The Director said no. Sen. Katz said Director Denico has told the GOC at the meeting that a major factor in his decision to divert the wood was his discovery shortly after January 29th that Stratton had been underreporting their inventory and that played a role in his decision to divert wood to them. His dilemma is that in the Director's detailed 5 page summary where he laid out his reasoning for the decision he made, there is nothing about that at all. Sen. Katz said the Director acknowledged that he was correct in his reading of the summary and asked why that information was

not in his summary if it was so important to him. Director Denico said he didn't recall that discussion. Sen. Katz said Director Denico just told the GOC that his discussion had nothing to do with Stratton's underreporting of their inventory. The Director said he did not understand the question. Sen. Katz said the Director told the GOC about a conversation he had with the folks from Stratton at a Forest Products Council meeting. Director Denico said back up to last week's GOC meeting when Stratton said they had talked to him about inventory and then that got him thinking about when did he ever talk to them? One possibility was at the Council meeting, which he did not recall, and the other one he then remembered was that he had to call them to straighten out the wood processor report. Sen. Katz asked if Director Denico heard the testimony of the folks from Stratton at the last GOC meeting. Director Denico said he did not listen to anybody's testimony, but was given bits and pieces of what was said. Someone told him that, in Stratton's recollection, they had talked to him.

Sen. Katz said in November when Director Denico made a decision to divert wood to Stratton that decision was made after Stratton had spoken with the Regional Manager, who then passed the information along to the Director and then he made the decision. Director Denico agreed. Sen. Katz thought more than one Regional Manager said that is how it always works. If a mill needed more wood that would be reported to the Regional Manager, the Regional Manager would assess the situation, make a recommendation to the Director and then he would make a decision. He said nobody at last week's meeting could recall a time when the Director unilaterally decided to divert wood with no recommendation, or input, from a Regional Manager. Sen. Katz said that was stated in the testimony he heard at last week's GOC meeting. He asked if the Director could recall any other situations where he made a directive to divert wood from one mill to another without any input from the Regional Manager. Director Denico said no, he couldn't.

Sen. Katz referred back to November when Stratton made the case to the Regional Manager that they needed more wood and the Manager checked with the Brochus and it was not going to cause a big problem for them so the wood went to Stratton. In this particular case, other than the Director's assumption that Stratton was still in dire need, what other information did he have that led him to the conclusion that Stratton needed the wood more than the Brochus did? Director Denico said several things informed his understanding. Again, on the 29th, he stopped at the Brochus and told them he had just come from Telos and there was still wood available. Sen. Katz said the Director has heard the Brochus' explanation that the Telos wood was too expensive. Director Denico said that is an assumption they were making. The difference was \$4 a ton. Two weeks ago the Brochus dropped the State's price \$4 a ton, bang, just like that. He said \$4 a ton is not a huge amount and is something within the bounds of being reasonable. Sen. Katz said, as he understands it, the Brochus told him that they were making a business decision that the Telos wood was too expensive for them and Director Denico is saying that led him to conclude that their need was not that bad. Director Denico said yes, that was one of the factors. In the summer they talked about the Telos wood and then when there was another round of wood in the fall, the Brochus never talked to the State about price so he thinks it is difficult to say that they were making a business decisions without knowing how much the State wanted for the wood. Sen. Katz said all the testimony at last week's GOC meeting was that every single mill was in some sort of dire situation that time of year as they almost always are given the impending mud season. He asked if the Director agreed with that. Director Denico said there were certainly differences in what dire means.

Sen. Katz asked what other factors went into the Director's decision that Stratton's dire situation was more dire than the Brochus. Director Denico said for 2 weeks in October and then in February Stratton only had 5 million feet ahead facing a 10 week shutdown and, to him, that was a crisis. Sen. Katz asked if he knew what the Brochus' situation was at that moment. The Director said the Brochus gave him every indication they were okay. Sen. Katz asked if that was solely based upon his discussion with them when they said the Telos wood was too expensive, we don't want it. Director Denico said you have to go back all the way into November when we asked them if they were interested. We asked them twice and never got a response. You have to be pretty sure of your volume if you are not even going to discuss a chance to pick up a million board feet which the State had on the table in Telos. You talk about a business decision, they made the decision to buy the Baxter wood which is right next door to Telos. They never talked price with the State in November/December for the Telos wood.

Sen. Katz said the Director had just stated that this is the only time in his involvement with Public Lands he ever made a unilateral decision to divert wood. Director Denico said that is right. One of the big factors is timing and if you are in July or August, you have time to correct a lot of things that could be wrong in terms of inventory. When you get to the first of February, you don't have any time. You could have spring breakup and in the 3rd week there are several warm days when all the roads are shut down and they all came out of the woodwork screaming they needed wood. But it froze up again and everybody did well.

Rep. Sutton referred to the information Director Denico provided the GOC. In an email chain from Sen. Saviello it states: "1. The Gov wants the tariff lifted on New Brunswick Lumber coming into the US." "2. The Brochu's do not want the tariff lifted." "3. The Gov (we think) through Denico has decided to hurt the Brochu's by stopping all Public Lands wood from going to the Brochu's and directing it to another mill. This will result in shutting down the Brochu mill for one week. 4. Yet Denico is still allowing P Lands' wood to go to Canada" and asked if Governor LePage, or anybody in the office connected to the administration, asked the Director to divert the wood. Director Denico said no.

Sen. Saviello followed up on the value of the wood at \$4 a ton. He said the Director was just talking about the cost of the wood and asked what the transportation cost was to bring the Telos wood down to the Brochus. He said the Committee did not get into costs at the last meeting because of it being proprietary, but asked if it was an easy ride on the road or is it going to cost a lot of money to move the wood from Telos down to the Brochu mills. Director Denico said it is a pretty easy and inexpensive haul from Telos down to the railheads. They load wood at the two railheads, which is fairly inexpensive and then the cost from the railhead to MRL is between the Brochus and the railroad. If you come from Telos on the roads, you probably come down with just a normal trailer with a total of 100,000 pounds and that would be more expensive. You would not go to MRL by truck you would only go to the PRL.

Sen. Saviello asked if you have 100,000 board feet, is that about a half a ton of wood. Director Denico said it is about 2 cords per 1,000 board feet. A cord would give you a half a thousand board feet and that is 2 tons. Sen. Saviello said so it is about 2 tons per 1,000 board feet so the Brochus are paying \$25 more a ton just to transport the wood. Director Denico said it would never have been that kind of money.

Sen. Saviello asked why the Director didn't move the Telos wood to Stratton. Director Denico said there is not a direct route from Telos to Stratton, you would have to go cross country and that is expensive. Sen. Saviello said Director Denico made a decision that he was going to keep Stratton open, but the Brochus, in fact, had the same inventory problem. Sen. Saviello continued, saying that they would have been at risk if things fell apart, but the Director said to them, I am taking your wood and sending it to Stratton and you can take the Telos wood. But the Telos wood was too expensive for the Brochus to transport. Director Denico said the Brochus were taking the Baxter wood. Sen. Saviello said he did not want to get into discussion of the Baxter wood. The Director said you have to because you say they felt that Telos was too expensive, so then why were they taking Baxter. Sen. Saviello said because being good citizens, the Brochus were trying to help the Baxter Park Authority by taking a little bit of their wood.

Sen. Saviello asked if the State's Public Lands lost or made money in diverting the wood. Director Denico said OPEGA kept saying through this time period, so they took the data from that time period, but continued on after the mandatory reporting was over and found they had shipped about 6,500 tons of diverted wood to Stratton and the price had come out about \$2.50 a ton, not \$4. The difference was about \$15,000 for sending the wood to Stratton instead of PRL.

Sen. Saviello asked if Director Denico agreed or disagreed with the softwood tariffs that are put on by the U.S. on products coming back in. Rep. Pierce objected to Sen. Saviello's question. Sen. Saviello said his question is a critical part of his questioning because in fact that is what Rep. Sutton quoted earlier in the meeting and is why he asked the question. Director Denico asked for 5 minutes to talk with the people he reports to.

RECESS

The Chair, Sen. Katz, recessed the Government Oversight Committee at 10:27 a.m.

RECONVENED

The Chair, Sen. Katz, reconvened the GOC meeting at 10:36 a.m.

Sen. Saviello asked if Director Denico personally agreed or disagreed with the soft wood tariffs. Director Denico said since the question was only from Sen. Saviello, he asked if the other GOC members wanted him to answer the question.

Rep. Pierce said he objected to Sen. Saviello's question because it is not part of OPEGA's review.

Sen. Katz said, as Chair, he was going to rule to sustain the objection to Sen. Saviello's question because it will take the Committee down a path they don't want to go. He said his ruling is subject to being overruled by the Committee.

Sen. Saviello challenged Sen. Katz's ruling that Director Denico did not have to answer the question.

Sen. Katz said Sen. Saviello's challenge does not require a second so asked Committee members how many thought Sen. Saviello's question was appropriate and Director Denico should have to answer it. Sen. Katz recorded 6 members in favor and 4 opposed. Sen. Katz said he has been overruled and asked Director Denico to answer Sen. Saviello's question.

Director Denico said whatever his personal opinion is would not have any bearing on the job he is doing for the State. He said personally, he does not believe Maine needs a tariff on spruce and fir.

Sen. Libby referred to the information the Director provided the Committee and was trying to understand the period of time around January 29th, which is when he met with the Brochus, and the next week and a half. He stated to the GOC that the Brochus indicated that they were not interested in purchasing Public Lands' wood on the 29th. Director Denico said he told the Brochus there was wood at Telos. Rich Smith ran the numbers, but the numbers he was running must have been old numbers because they never discussed the Telos wood that was cut that winter so he was off by a whole season on what their expectations may have been.

Sen. Libby asked if the Brochus indicated to him that they were not interested in purchasing wood from Public Lands at the 29th meeting. The Director said only in the fact that after Rich Smith said he ran the numbers and he couldn't make it work, they just dropped the subject. Sen. Libby said Director Denico left that meeting feeling as though the Brochus would not be purchasing wood from Telos. The Director agreed. Sen. Libby asked if there was an expectation that they would be purchasing wood from Public Lands. Director Denico said Public Lands never came up so he had no expectation that they wouldn't be taking wood.

Sen. Libby said the Director stated that he had asked the Brochus for prices twice up to that point and the Regional Manager gave them the volumes and never got an answer so the Regional Manager sent out an email saying they never responded and asked if they wanted to respond. The Regional Manager did not receive an answer.

Sen. Libby said Director Denico provided emails that PRL/MRL were working on prices and would get back to him. Director Denico said apparently those were prices for other areas because Telos did not come up.

Sen. Libby referred to an email dated February 6, 2018 from PRL to Doug Reed and it says “Bring on the wood! Thanks Rich” so that is indicating that there has been a change of heart with the Brochus and they are interested in purchasing wood. Director Denico said that email could have meant a dozen different things. They could have been talking about pine from Hancock or spruce and fir and it might be in response to opening for longer hours which they do.

Sen. Libby said after the January 29th meeting the Director made the decision to divert the wood from the Brochus to Stratton. He asked when that decision was made. Director Denico said obviously he had made it by the 7th so it was in that timeframe between the 2nd or 3rd and the 7th. In that timeframe the Director said he heard about Stratton being 5 weeks ahead and he also thought the State had not fulfilled their commitment to Stratton. In November they were promised that the State’s wood was going to help them. Obviously the State had not been able to come up to the bar. He said the State was a lot more significant to Stratton than MRL because the Brochus saw probably 3 times more than Stratton does so the State could make a difference at Stratton where they are just a minor factor to the Brochus.

Sen. Libby said when Director Denico made his decision to divert wood from PRL/MRL to Stratton did he expect that the Brochus would be upset with his decision and when did he communicate his decision to them. The Director said he did expect the Brochus would be upset with his decision. The Brochus called him on the 12th and that is when they said they thought the wood went to Canada. Director Denico said the wood went to Stratton and then they were okay with that. Sen. Libby said the Director made the decision to divert wood sometime after January 29, but before February 7th to divert the wood to Stratton and asked who he communicated that decision to. The Director said to the Regional Managers by phone he told them he made the decision based on what he knew. There was a crisis at Stratton and that he did not get that sense from MRL.

Sen. Libby noted that almost a week goes by from the time the Director made his decision to when the Brochus contacted him by phone. The reason they called was because they were not happy that they were not receiving the Public Lands wood and asked what the nature of that conversation was. Director Denico said the Brochus never asked for the wood back in that conversation. When they found out the wood went to Stratton they seemed to be relieved it was not going to Canada.

Rep. Mastraccio asked why Director Denico did not notify the Brochus ahead of time that the wood was being diverted. In the November change order of wood there was a lot of discussion with everybody, but in this case he made a decision on his own, but did not call the Brochus to tell them the wood was being diverted. The Director said that was correct, he did not call the Brochus. On January 29th he and the Brochus had a discussion, but he had not made up his mind about diverting the wood to Stratton at that time. A few days later he did make up his mind, but the Brochus and he had already had a lengthy discussion and although it did not cover moving wood, it did cover everything else under the sun. He said he had limited time to act because the weather could change at any time and a decision need to be made fast. So, he made it. He was focused more on getting wood moved more than talking with anybody about it and that was one of the reasons he did not engage the foresters in a lengthy discussion about the wood. Rep. Mastraccio said she did not understand what made this time any different.

Rep. Rykerson said it was stated that all mills are in crisis because of the imminent weather change, but last week Mr. Reed said “I have never had to make a change like this”. Director Denico said earlier he did not have time to contact anybody regarding diverting wood to Stratton and that the uniqueness of this situation was that there was less time than any other times in the past. He asked what made this situation unique compared to all the other years. Director Denico said they do not change deliveries of wood that often. It is a very small amount of wood that is changed each year and, if they do make changes, they come at a time, for example in October when you would have all the fall and into the winter to correct the situation. When you have a crisis in February you do not have the luxury of time, you have to make your decision and go with it and can’t spend a week deciding if you were right or wrong because of the weather factor.

Rep. DeChant asked if Director Denico were to do the diverting of wood now, would he do it in the same way. The Director said hindsight is 20/20 and probably he would call the Brochus if he had it to do over again. Rep.

DeChant saw the conversation on the 29th as a separate action to making a decision later and in her opinion, not following through professionally, is not the sole reason why this matter is before the GOC. She thinks the crux of the matter is that there is question on what was the process of making a unique decision that had potential ramifications for businesses. Director Denico said Stratton had a crisis and the only way to address their crisis was the way he went. Yes he should have called the Brochus to let them know about the diversion of wood to Stratton. He said it would not have changed his decision, but that would have been a more polite thing to do.

Rep. Pierce asked if Director Denico himself made the call to divert the wood to Stratton. The Director said it was his decision.

Sen. Davis asked if when the Director made the decision to divert the wood he said he was not playing favorites and it was based on the economy and the need. Director Denico said he was not playing favorites and agreed it as based on the economy and need.

Sen. Davis asked if the Telos wood eventually went to Canada and the Director said it did.

Sen. Katz said Director Denico said a couple of times that it went into his decision-making that Stratton was only 5 weeks ahead in their supplies and asked if that was correct. Director Denico said that was what he heard. Sen. Katz asked where he had heard that. The Director said he thought Pete Smith told him, but said Mr. Smith did not remember telling him that. Sen. Katz said Director Denico gave the GOC a very detailed summary of the diversion of wood to Stratton from his perspective, but he did not see anything in the summary about the Director saying it was his understanding, at the time of the diversion, that Stratton only had a 5 week supply left. Sen. Katz said that must have been an important factor in the Director's decision and asked why it was not in his summary. Director Denico said maybe because he is not infallible on his memory.

Sen. Katz said Director Denico talked a lot about how he discovered that Stratton's accountant of available lumber was actually inaccurate and had understated the severity of their situation. Director Denico said Stratton did not understate anything, it was the way the State ran their books. What it indicated to him was that Stratton ended the spring in bad shape and got in worse shape because they were 8 million board feet behind what they carried the year before. Sen. Katz asked if every lumber yard was reporting things in the same way that Stratton was reporting things. Director Denico said yes. Sen. Katz said wouldn't that mean that every lumber yard was in worse shape than he thought. The Director said no, it was the State reporting that information incorrectly.

Sen. Katz said the history of the diversion of wood, as some may see it, was that everyone was aware that the Governor was in a very public dispute with the Brochus over the Canadian tariff issue. The Brochus had written an editorial critical of the Governor's position and it was clear the Governor was not happy with it. Not long after that Director Denico made a unilateral decision to divert wood away from the Brochus, a kind of decision that he had never made before without input from the lumber yards and Regional Managers. The wood was in fact diverted away from a critic of the Governor and that Director Denico knew, or must have known, that the decision was going to hurt a critic of the Governor. That he did not seek any input from the Brochus before he diverted the wood to see what their need was and never told the Brochus afterwards that the diversion happened. They found out about it some other way and called him. Sen. Katz said the conclusion that some draw and is why the review is before the GOC is that perhaps Director Denico did this to please his boss. The Director is telling the GOC that is not true. Sen. Katz asked the Director if that was right and Director Denico agreed.

Sen. Saviello said currently if the State does road bidding it is a handshake. The Director agreed. He asked if someone wanted a contract with the State would legislation be needed before the State would be allowed to enter into an agreement or would the Director do it automatically if somebody request a contract. Director Denico said someone might think it is a good idea when we are in this predicament when they really need spruce and fir, but in the past 3 weeks the State has had a mill drop the price by \$5. If that mill is saying they really want a binding contract for price, would have the same feeling today. If the State had binding agreements on volume and price, they currently would not have enough staff to keep up with the work contracts would generate.

Sen. Saviello said if he had a lumber mill and wanted a contract with the State, is legislation needed to allow that or can that be done today. Director Denico did not think there was anything that would keep that from happening today. He said, legally they could get a contract, but would the State issue them a contract, he didn't know. That might be a question for the Attorney General's Office.

Sen. Katz, on behalf of the GOC, thanked Director Denico for answering their questions. He asked the Director if he thought he was treated fairly by the Committee. Director Denico said he thinks there is still a misunderstanding and he was not going to break out of that. He said there comes a time when you are in a crisis, and in his estimation, Stratton was in a crisis and there was not time to spend days working through things and in the end you made the same decision. Stratton needed the wood and the only place to get the wood was from the Brochus. He does not think the sense of the urgency of the situation was getting across to some of the Committee members. When you are in that situation, decisions have to be made quickly, but said he would concede that he should have made a call to the Brochus.

Sen. Katz asked if the Director thought he was treated fairly by the GOC. Director Denico said he thought everyone had been very civil.

Motion: In accordance with Title 3, Chapter 429, I move that testimony from today's proceeding shall be released as a full audio recording of the testimony subject for an opportunity for witnesses to object in accordance with criteria provided in Chapter 429 and a subsequent Committee decision on the objections. (Motion by Rep. Mastraccio, second by Sen. Saviello, motion passed by unanimous vote 10-0.)

- Committee Vote on Information Brief

Motion: That the Government Oversight Committee endorse OPEGA's Information Brief on Sales of Timber Harvested from Public Lands. (Motion by Rep. Pierce, second by Sen. Saviello, motion passed by unanimous vote 10-0.)

- Continued Committee Work Session

Sen. Saviello thanked the Committee for their tolerance in the questioning and the time it took in doing the review. He said in his 16 years at the Legislature, and certainly in the last 4 years, it has been very discouraging when Committees could not do their work. This matter did not belong before the GOC, it belonged in the Agriculture, Conservation and Forestry (ACF) Committee. He believes part of the solution, and what he will make as a recommendation, is that whoever is on the ACF Committee next year, look into whether a contract option legislatively is required. Does legislation have to be submitted, or does it require substantive rule-making that gives a purchaser the opportunity, if they so desire, to enter into a contract.

Rep. Pierce agreed with Sen. Saviello. He said he would ask that the Department of Forestry keep more notes on their telephone conversations and emails. The diversion of wood seems to be a one-time thing and from the testimony at the last GOC meeting everyone seems to think the current system is working. He thinks once the GOC forwards a letter to the ACF Committee with their concerns and recommendation the GOC has completed its work on the review.

Sen. Davis reminded everyone that the Chief Executive asked that the matter come to the GOC not the ACF Committee.

Sen. Katz said if the GOC does nothing else, the report has been endorsed and this will conclude the matter before the GOC.

Motion: That the Government Oversight Committee put a letter in the file for next year's ACF Committee to work on this issue, both from the recordkeeping process and rule-making around providing contracts and look into whether there is any legislation regarding optional contracting that is necessary in order to prevent this from happening again in the future. (Motion by Sen. Saviello)

Discussion: Rep. Pierce thought the ACF Committee should review this to see if it is necessary. It might already exist that the Department can enter into a contract if they agree. There could also be short term contracts. He does not think the Legislature should look into legislation, he thinks they should look into can they do it already.

Sen. Saviello rescinded his motion. He said he was not saying they needed to do it, he was saying they need to look into it and then you do rule-making around the kinds of records the Department is going to keep so that way it is clear that everybody is consistently taken care of.

Motion: That with OPEGA's Information Brief on the Sales of Timber Harvested From Public Lands complete, the GOC recommends to the ACF Committee that they review whether the Department of Agriculture, Conservation and Forestry can enter into contracts for wood harvesting and would they be willing to look into rule-making for better recordkeeping for the Department. (Motion by Rep. Pierce, second by Sen. Saviello)

Discussion: Rep. Rykerson wanted to add to the motion the looking into compulsory notification of the parties involved instead of just requiring a contract. Rep. Pierce and Sen. Saviello agreed to Rep. Rykerson's friendly amendment.

Sen. Katz said the motion before the GOC is that the ACF Committee look at the possibility of contracts, with a friendly amendment to add the language of notifications from the parties involved between Public Lands and suppliers if a diversion takes place.

Director Fox asked for clarification that regardless of a contract, if there is a diversion of wood, that the person from whom it is being diverted will be notified prior to the diversion.

Sen. Katz said that is a friendly amendment to Rep. Pierce motion, seconded by Sen. Saviello. Rep. Pierce and Sen. Saviello accepted the friendly amendment to their motion.

Rep. Sutton said she would support the original motion, but not with the additional amendment. She thinks it is micro-management and not necessary.

Vote: Above motion passed by a vote of 9 – 1.

Sen. Katz asked the Committee if there was any further work needed by the GOC on this review. Hearing none, the GOC has concluded their work on this matter.

- **OPEGA Report on Temporary Assistance for Needy Families Program (TANF)**

- **Continued Committee Work Session**
- **Discussion Regarding Potential Addendum to OPEGA's TANF Report**

Sen. Katz said the Committee has endorsed the TANF Report and had discussion about what should happen going forward.

Sen. Libby referred the Committee to the memo he distributed at the September 27th GOC meeting. His interest in the memo is looking forward to future policy makers who may be reviewing the TANF Report and thinks the scope of the review was completed properly, however, there were some bigger questions raised, especially based on the public testimony that was received during the Public Comment Period on the Report that merit further discussion. For that reason he proposed that the GOC write a letter that includes the points that are brought up in his memo to the next GOC and the Health and Human Services (HHS) Committee, in the next Legislature. Sen. Libby did not think his memo was in the proper form for it to be considered an

addendum to OPEGA's Report, but thinks a letter to the next GOC would serve the purpose that he and others, including Sen. Gratwick, are interested in. (A copy of Sen. Libby's memo is attached to the Meeting Summary.)

Motion: The Government Oversight Committee send a letter to the next GOC and the Health and Human Services Committee asking that they consider the points raised in Sen. Libby's September 27, 2018 memo to the GOC regarding OPEGA's TANF Report. (Motion by Sen. Libby, second by Sen. Gratwick)

Discussion: Rep. Mastraccio said the GOC will include Sen. Libby's memo to be part of the letter this GOC will forward to the next GOC and HHS Committee.

Rep. Sutton asked if Sen. Libby's memo would appear as though it is from the GOC or from Sen. Libby. Director Fox said the memo will be from the GOC saying that issues were raised in public testimony that members of the Committee thought may warrant further discussion and attach Sen. Libby's memo asking that the next GOC and HHS Committees look at the matter further. The memo would be an attachment to the memo to the GOC letter. Rep. Sutton wanted to make sure it would not appear as though the GOC was endorsing everything Sen. Libby's memo included, the Committee was merely passing it along at a request. Sen. Katz believed that was the intent of the motion. Director Fox said she could specify that in the letter to the two committees. Sen. Katz believes the memo is from Sen. Libby and Sen. Gratwick. Sen. Libby said he and Sen. Gratwick worked on the memo together, but Sen. Gratwick was not at the last meeting so Sen. Libby put his name on the memo. Rep. Pierce agreed with Rep. Sutton's comments.

Sen. Katz noted that the GOC chairs met with Sen. Libby and Sen. Gratwick earlier in the day to discuss that OPEGA's TANF Report did exactly what they were tasked with doing in the review, but there were Committee members who had concerns that maybe there ought to be further exploration of an issue beyond the scope of OPEGA's review. This course of action appeared to be a good mechanism for doing that.

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

Sen. Katz asked if there were any other issues Committee members wished to discuss regarding OPEGA's TANF Report. Hearing none he said the GOC's work on the TANF review is complete.

Director Fox said she will be sending the GOC the draft of the letter to the next GOC and HHS Committee for their approval.

- **OPEGA Report on the Child Protection System: A Study of How the System Functioned in Two Cases of Child Death by Abuse in the Home**

- **Update on Status/Completion of OPEGA's Work**

Director Fox said Sen. Diamond raised his concerns at the last GOC meeting about the possible loss of momentum on this matter. She stated that it would not be set aside because of future issues that may come up with the next GOC. She wanted to reassure the Committee that by the time the next GOC is seated, OPEGA's Report on the Special Project on the Child Protection will be ready for presentation, if not at the first meeting, then the meeting immediately following.

REPORT FROM DIRECTOR

Director Fox said there is nothing new to report on OPEGA's status of their Work Plan since the September 27th meeting.

She said because this may be the last meeting of this GOC, the September 27 and October 3 Meeting Summaries and the GOC's draft letter to the next GOC and HHS Committee will be emailed to the Committee members for their review and acceptance.

ANNOUNCEMENTS AND REMARKS

Sen. Katz said it is the intention that this will be the last meeting of this GOC unless something extraordinary comes up between now and the beginning of December.

Sen. Katz said as Committee members know, noting that he has been on the Committee for 8 years, there is a gentleman, Dwight Hines, who attended just about every meeting the GOC has had over the years. He has rarely spoken before the Committee, but Mr. Hines has been at the meetings because he has an interest in government accountability and an interest in the work of the GOC and OPEGA. He has been the public watchdog over all the work done by this Committee. Sen. Katz said Mr. Hines was not able to attend today's meeting, but said the GOC had a plaque prepared making him the Honorary Thirteenth Member of the Government Oversight Committee and will make sure that Mr. Hines receives the plaque. For those Committee members that serve on the 129th GOC, he is sure they will see Mr. Hines at their meetings.

Sen. Katz said this will conclude his service in the Legislature, noting he has been on the GOC for all 8 of his years. He considers the work of the Committee to be about the most important work he has been associated with for those years. He thanked the people who set this process in motion many years ago for their vision and the members of the 128th Committee for their 2 years of terrific work.

Sen. Saviello said he, and believes Sen. Davis, supported Sen. David Trahan's work to create the GOC/OPEGA from day one. To have his last day in the Legislature be sitting on the GOC is an honor and he would share with all members who have been on the Committee before, it has been his pleasure to serve with them and those that are back on the GOC next year to keep up the good work because this is very valuable work and more than exceeds the expectations he had for it.

Sen. Davis complimented the Chairs of the GOC for the excellent job they have done.

Sen. Katz said he wanted to compliment Rep. Mastraccio for her work as Committee Co-Chair and said he did not think they had a partisan word between the two of them in the last 4 years, which is how it is supposed to work.

Rep. Mastraccio thanked Sen. Katz for all that she learned from him and hopes that if she can serve on the next GOC that she can carry on what he has shown for character over the last 8 years.

NEXT GOC MEETING DATE

The 128th GOC does not plan to meet again unless something extraordinary should arise.

ADJOURNMENT

The Chair, Sen. Katz, adjourned the GOC meeting at 11:40 a.m. on the motion of Sen. Gratwick, second by Sen. Saviello, unanimous.

To: Members of the Government Oversight Committee

From: Sen. Nate Libby

Re: Draft Addendum to OPEGA's 2018 TANF Report

Date: September 27, 2018

While the TANF report is credible and sufficiently relevant and complete with regard to the assigned scope of inquiry, several findings from the report as well as information from public testimony raised new and important questions that were not explored by OPEGA. As a result, important information relevant to DHHS's administration of the TANF program is absent from the report. In this respect, the report is limited to its factual findings and cannot serve as a basis for reaching conclusions regarding the effectiveness of policy changes during the study period. The purpose of this addendum is to supplement the TANF report with information that may be relevant to future policymakers and other interested parties.

- 1) Credible evidence presented in public testimony raises important questions suggesting that 2011 policy changes caused significant harm to TANF families. We learned from the report that the TANF caseload decreased by 70% between 2010 and 2017 and that the major causes of the decline were statutory changes made by the Legislature in 2011. It was not part of the OPEGA charge to investigate or make any determination on the status of any of the families who lost TANF assistance as a result of these changes, including whether they became employed, if they remain in poverty or if their family circumstances improved or worsened in any way. We heard compelling testimony from multiple members of the public that data, research and anecdotal evidence all point to a similar conclusion – that the 60-month time limit and changes in sanction policy harmed many of the families impacted, including over 15,000 children, and that they suffered considerable hardships and were worse off as a result.
- 2) During the period of the report, the share of Maine children in poverty that received TANF cash assistance decreased significantly despite a growing TANF balance. The scope of inquiry did not include an examination of changes in child poverty, and extreme child poverty rates throughout the study period or changes in such measures as child food insecurity. Again, we learned from public testimony that as the TANF caseload decreased by 70% between 2010 and 2017, the number of children in poverty who received TANF fell from 47% to 19%. This means that approximately 81% of children living in poverty were not receiving TANF cash assistance even while the amount of federal TANF funds available to Maine grew to over \$140 million during the same period.
- 3) The amount of TANF funds DHHS used to replace General Funds remains unknown. OPEGA determined that programs and services once supported by General Funds are now, at least partially, supported by TANF funds. We do not know how much TANF funding was used in this manner. The Bangor Daily News reported in June 2017 that DHHS had planned to use \$34.5 million in TANF funds in State Fiscal Year 2018 to replace other state funding for existing obligations. Any amount of TANF spending, let alone such a potentially large sum, ought to be spent transparently and in furtherance of the purpose of the TANF program. Such supplantation simply substitutes one funding stream for another with no net-gain for families and their children.

- 4) Maine is not an outlier with regard to its TANF work participation rates. Most states depend on some mechanism, such as Maine's "Worker Supplement Benefit" (WSB), to meet the federal rate requirements. OPEGA indicated that DHHS considers the Worker Supplement Benefit (WSB) to be a temporary solution for meeting the federal work participation rates and that our TANF program will eventually meet the rate requirements outright. This appears to be an unrealistic goal for multiple reasons. The majority of states that meet the required rates do so by using some mechanism similar to Maine's WSB, which reflects how arduous it must be to meet the required rates outright. Additionally, we heard through testimony that many TANF recipients have significant barriers to work and need supports, counselling and training, which mostly do not count towards meeting the work participation requirements. It is not clear how participants with higher barriers would be impacted if DHHS discontinues the WSB and pursues its intention of meeting the federal rate requirements outright.