



SEN. NATHAN LIBBY, SENATE CHAIR
REP. GENEVIEVE MCDONALD, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. DONNA BAILEY
SEN. RICHARD BENNETT
SEN. SUSAN DESCHAMBAULT
SEN. JEFFREY TIMBERLAKE
REP. H. SAWIN MILLETT, JR.
REP. AMY ARATA
REP. MARK BLIER
REP. MARGARET O'NEIL
REP. HOLLY STOVER

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
September 8, 2021

Call to Order

The Chair, Rep. McDonald, called the Government Oversight Committee to order at 10:00 a.m.

ATTENDANCE

Senators:	Sen. Libby, Sen. Bailey, Sen. Bennett, Sen. Deschambault, Sen. Timberlake, and Sen. Keim
Representatives:	Rep. Arata, Rep. Blier, Rep. Millett and Rep. Stover, Rep. McDonald, and Rep. O'Neil
Legislative Officers and Staff:	Lucia Nixon, Director, OPEGA Matthew Kruk, Principal Analyst, OPEGA Amy Gagne, Senior Analyst, OPEGA Ariel Ricci, Analyst, OPEGA Sabrina Carey, Adm. Secretary, OPEGA/Clerk, GOC
Executive Branch Officers And Staff Providing Information to the Committee:	Justin Andrus, Executive Director, MCILS Bobbi Johnson, Associate Director of Child Welfare Services, Child and Family Services, DHHS

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Introduction of Committee Members

The members of the Committee introduced themselves.

Summary of August 11, 2021 GOC Meetings

The Summary of August 11, 2021 Meeting was accepted as written.

New Business

• OPEGA Report on Evaluation of the Maine Seed Tax Credit (Separate Report)

Rep. McDonald announced that there will be a Public Hearing on the Evaluation of the Maine Seed Tax Credit and introduced Director Nixon. Director Nixon explained that they had presented the Maine Seed Tax Credit Report during the last meeting and explained the process of registering to speak during the public hearing and how to submit written testimony. Rep. McDonald then opened the public comment period on the Evaluation of the Maine Seed Tax Credit.

- Public Comment Period

Nathaniel Henshaw, President of CEI Inc. from Brunswick, presented his testimony. (A copy is attached to the Meeting Summary.)

Tim Agnew, presented his testimony. (A copy is attached to the Meeting Summary.) He thanked the committee for conducting a well-rounded report.

Senator Bennett asked for the actual quantitative numbers as to how venture capital has grown in Maine. Agnew answered that he has numbers from 2020 that he has used to compare to numbers that he had generated 10 years ago, but noted that they came from different sources so they aren't a perfect comparison and that there is some investment capital that does not show in those numbers at all. For the purpose of comparing where we once were to where we are today, and how we compare to other states in the region he thinks they are indicative that we've come a long way. Agnew said he would provide more information. Sen. Bennett said he would appreciate more information and understands that sourcing could be a problem and a drawback because they don't know of all the investments being made but he admires Agnew's expertise and would like to get into the granularity a bit more.

Christopher Roney, presented his testimony on behalf of the Finance Authority of Maine (A copy is attached to the Meeting Summary)

John Burns, presented testimony (A copy is attached to the Meeting Summary)

Kate Foye, presented testimony on behalf of DECD (A copy is attached to the Meeting Summary)

Sen. Bennett asked Foye the same question he did Agnew, about the exact numbers of Maine's venture capital. He would like to understand the overall quantity of investment, particularly from venture capital firms in Maine and how it has changed over the years. Foye responded that she would look into those answers and get back to the committee, but mentioned that Chris Roney from FAME may have a better idea of

those numbers, because they administer the program. Sen. Bennett would like to understand the sourcing for it, because there is a lot that they don't know and it would be interesting to see what they do know, as it would inform them all as policy makers better. One of the recommendations in the report was better data, but rather than better data on the companies, he is more interested in better data on the investing that is going on because he thinks that this is the purpose of the program. Some of the other proposed purposes of the program are a little bit tangential in his view. He stated that he would like to focus on business creation and the investment as those two purposes are the most important for him and for anyone providing testimony, that is what he would like to see. Ms. Foye agreed it was a great question and will work with her team on getting that information back to the committee.

Rep. McDonald added Chris Roney back in to the meeting to answer Sen. Bennett's question.

Sen. Bennett then asked Mr. Roney for any information he has on the level of venture capital that is happening in Maine that would be useful. He knows that some of it flows through the Seed Capital Tax Credit but not all of it, and is just trying to understand how much this is used and how stimulating it actually is for those two critical purposes, which is business success and the investment levels. Sen. Bennett noted that Mr. Agnew said that one of the primary purposes of the program that is written into statute was to improve Maine's take of that kind of investment, and any data Roney has on that, even if imperfect, would be really useful. Mr. Roney answered that he has the numbers for the venture capital that has come through the program and it will be a little more challenging to get the entirety of Maine's numbers, and get the research in terms of comparative with other states, but he will work to get some additional information.

Brian Whitney, President of the Maine Technology Institute (A copy of his testimony is attached to the Meeting Summary) commended the OPEGA staff on their thorough evaluation of the program. Whitney commented towards Sen. Bennett's previous questions stating that it is difficult to get a good handle on venture capital invested in the state. There are a couple of reports that kind of track that, and illustrate how difficult it is to track those numbers, Moneytree for example, issued a report that said venture capital investments in Maine were about \$18 million in 2020, while another report called the "Venture Monitor" noted that Maine companies received \$86 million in venture capital in 2020. He believes it goes without saying, that despite the disparity between those two reports, it is clearly evident that there is a scarcity investment capital in our state, and we need to do whatever we can to help spur that.

Kenneth Capron stated that he is really glad to see when OPEGA does reports on anything involving economic development in Maine, so he thanked them for the report. He noted that the report highlights some of the issues that have been around for a long time. That is the goals that are stated are hard to prove without additional facts. But that's not the reason he wanted to speak, he thinks the issue this brings to light goes back many years to how does a new company looking to seek investment or to get help from the state on investing in a project, how do they find out about all of the resources that are available? He's been at this for a few years and if it weren't for the OPEGA report he wouldn't have known about this particular fund. So he is delighted to have another opportunity to ask and beg for money, but what he is finding is that for each particular source you have to fill out some forms that he feels is the same information over and over. He may be wrong in some cases, but for the most part, most of the report isn't looked at by people who are going to loan money, most of the decision is based on a few key factors like the team that is involved and who is going to guarantee the loans. But he is there speaking out about some way to coordinate through a central approach. How do you let potential start-ups know that these economic development funds are available? That is his concern and he thinks it goes back to a broader issue that he thinks the GOC has maybe dealt with before with these types of funds, is how do you find out what is even available. For example, if he goes to MTI he would like to be able to see signs pointing him in the right direction to locate all of these funds, because it is a very confusing path to figure out funding mechanisms when in fact he should be paying attention to the project and not how to fund it.

Rep. McDonald asked if there was anyone else who is there to testify during the public comment period on the Evaluation of the Maine Seed Tax Credit report. With no more public comments, Rep. McDonald asked the committee if they were prepared to move into work session to which Sen. Libby replied that the committee is ready.

- Committee Work Session

Rep. McDonald opened the work session by explaining the purpose of the work session, which is for the members of the committee to discuss the OPEGA Report, Evaluation of the Maine Seed Tax Credit and determine any further actions. She noted that work sessions are generally for discussion and participation by committee members, however the chair may allow an outside individual to come in to answer questions for the committee. Rep. McDonald asked if there was a motion on any further actions on the OPEGA report on the Evaluation of the Maine Seed Tax Credit.

- Committee Vote on the report

Motion: To Endorse the Report on the Evaluation of the Maine Seed Tax Credit (Motion made by Sen. Libby, second by Rep. Stover).

Vote: Motion (above) passed by unanimous vote 10-0, 2 members absent. (Rep. O'Neil voted on the motion in accordance with the GOC Rules.)

Discussion:

Sen. Bennett asked Director Nixon to explain exactly what the endorsement of the report means, as he supports the report, but there are some conclusions that he might disagree with. Director Nixon explained that as part of the process and procedure of receiving an OPEGA report, the committee takes up endorsement, which means that you find the report to be complete with regards to what was assigned to be done, that the results are credible and objective and relevant, and that any recommendations contained in the report are reasonable and appropriate for the issues identified.

Sen. Libby addressed Sen. Bennett stating that at the last meeting he talked about endorsing an OPEGA report on the review of the citizens' initiative process, and at the time noted that as a legislator, just by way of example, he may have opposed the citizens' initiative process as policy but he may still vote to endorse the report because he found the OPEGA work to be credible and valid. Sen. Libby continued stating that they were trying to take an action that endorses the analysis process that OPEGA conducted and when we get to the House and Senate floor that is when we can exercise our opinions and views on the policy matter before us. He hopes that helps separate the two ideas.

Sen. Bennett thanked the chairs and Director Nixon for their explanation and states he is prepared to endorse the report and there are some policy conclusions that he thinks he would take minor issue with, such as some of the proposals relating to the sorts of businesses that should be prioritized under the seed capital tax credit, but those are incidental and minor. Sen. Bennett believes the report is fine work and he agrees with all of the people who testified on that basis, and he thinks it will be informative for future policy making, which he thinks they should try to endorse as well so that they can have a debate about some of the drift that has maybe occurred with the purposes of the Seed Capital Tax Credit and would like to see it tightened up.

Rep. Millett stated that he was wanting to see how the committee feels about the three recommended actions both legislative and management that were contained in the report presentation (power point). He supports endorsing the report and thinks that there is a lot of good recommendations there and was

wondering what kind of legislative and internal management follow through would be expected by the motion and how clearly, they need to advise the OPEGA Staff in that regard.

Sen. Libby explained that the motion to endorse the report is one of many actions that the committee could take. They could consider introducing legislation to the taxation committee, they could talk with the taxation committee about introducing a bill for them to vet, they could respond in writing as a committee to FAME management outlining their findings and making specific asks for how they administer the program, and those kinds of things. Sen. Libby reminded them that Christopher Roney indicated that they are largely in agreement with the findings on the management and administration side and that they are working on implementing changes because there were some deficiencies there especially in terms of data gathering and reporting. Those are a few options that they have before them to do with this report.

Rep. Millett was wondering if with the help of Director Nixon, that Sen. Libby could put his comments in writing and use them as an action as further endorsement of the report that might be on our October agenda as he likes what Sen. Libby spoke to and he wants to make sure that they have an action plan as a follow up to report endorsement.

Director Nixon noted that process-wise with an OPEGA Report, there are really two votes that could happen, the one is the motion that is on the floor, which is purely endorsement as the work product as just described to Sen. Bennett, and discussed by Sen. Libby. And the other piece, which is a separate vote in which you discuss and digest information then take a vote on follow up legislative actions such as Sen. Libby described or the committee drafts legislation or the committee refers something to another committee. The endorsement of the work product is a statutory requirement for OPEGA, and the committee deliberation of the substance of the report and the recommendations on whether they want to take further action is separate. As Rep. Millett mentioned, at the end, between pages 25 and 29 of the Report, is where OPEGA listed those three specific recommendation that Rep. Millett was bringing attention to. Two of them are recommendations for legislative action and one is a recommendation for management action by FAME.

Rep. McDonald asked if it was appropriate to go ahead and vote on whether or not to endorse the report and then as a separate discussion, discuss and vote on the follow up? The committee agreed so they decided to proceed and take that vote and then discuss follow up from the committee. The committee vote was then taken.

-Continued Work Session

Sen. Deschambault thanked Rep. Millett for bringing up a reference to the presentation (power point), and thanked Director Nixon for making the cross reference to the report pages, and she thinks that it's a good question to ponder about the recommendations. One of the recommendations was about data, and the general counsel for FAME, Chris Roney, did mention and admitted that they are not doing a very good job on data, and that he would work on resolving that deficiency. She takes him at his word, that he will work on getting that data and she thinks that's an easy step to work on so that they would have that information. The recommendations are very well mapped out, the design, the data, and the goals. She is unsure whether another committee would need to look at the recommendations and is unsure of what the GOC Committee's role would be.

Sen. Libby suggested they talk about the management oversight piece first, and then talk about policy changes in a bill second. For a suggestion, the GOC could write to FAME, asking for their action plan to each of the three recommendations that OPEGA outlined in their report on page 28 and 29. Those three items are a number of changes around data collection, administrative changes around data analysis, and

administrative changes and compliance with annual reporting requirements in statute. They could ask FAME for a response on their action plans and give them a period of time to respond and indicate how they can achieve it within their existing resources. Sen. Libby continued by stating that he agrees with Sen. Deschambault's point by putting it in writing and asking for a detailed response and an implementation plan.

Sen. Bennett said he would endorse the approach that Sen. Libby articulated, and on the secondary question of legislative action, he thinks he would want to wait and look at more data regarding some of the underlying purposes that he mentioned in his questions about the tax credit as well as learning more from FAME about that implementation plan before taking up consideration of potential legislative options that they might have. He thinks getting an answer to the questions that Sen. Libby just put forward would be a great first step.

Sen Keim wondered that if they are sending a letter to FAME with those bullet points, that they would also ask them to talk about the purpose of this Credit, as what was included in the recommendations on page 26 which would just say that the legislature, with consultation with FAME and other stake holders clearly define program goals, that they also ask them to begin that discussion as well, to ask them to begin the discussion on how they would suggest tightening up the program goals?

Director Nixon read the recommendation on page 26 that Sen. Keim brought up, which recommended that the legislature, in consultation with FAME, DECD and other stake holders reevaluate and clearly define program goals and success looks like in terms of outcomes. She believes that Sen. Kiem is asking to take it one step further by asking FAME for their input to feed into that discussion.

Sen. Libby stated that what they do in terms of policy changes, a lot of decisions have to be made if they are going to make changes to this tax credit and he thinks they are likely to have divergent views on this committee. There have been occasions where the GOC draft and introduces legislation to a policy committee as a follow up to one of our research and analysis projects. This credit though, given the time that the Taxation Committee has spent on it in the last session and the depth of the policy questions at issue, and given the limited staff resources, especially in light of the work we have tasked OPEGA with at our last meeting, the Child Protective Services work on a very truncated timeline it is going to be challenging for folks to meet. He wonders if they "punt" this one to the Tax Committee, and work with the chairs and leads of Tax to have a bill introduced and maybe follow along in their process, provide the data we have collected and provide the answers we have sought, but send the policy piece to the Tax Committee.

Sen Bennett would consider that as a possibility, but he would prefer to get answers to the questions that they lay out. He does subscribe to the notion that they have some more pressing matters before us, so he doesn't mind tabling legislative recommendations for actions pending receiving more information. Given the workload of the committee and the priorities of the committee, he doesn't see a great need to act in an expeditious fashion on this report.

Director Nixon summarized and gave a brief overview of the questions the committee was considering asking. She stated that there are two parts. There is a series of questions that Sen. Bennett asked from some of the folks who testified, noting that OPEGA has made note of those and will work with those people to see what they can get for answers. The other piece was during the work session, Sen. Libby proposed consideration of drafting a letter to FAME to request that they provide information on their action plan and implementation strategy for the recommendations for management action that OPEGA outlined on pages 28 and 29 of the report around the processes for data collection analysis and reporting. She believes it would be requesting a report back from FAME to the GOC with their information on that, and

from the public hearing following up on the questions that Sen. Bennett asked and any other questions that were asked at the public hearing and getting those sent in to the committee as well.

Rep. McDonald agreed that she would be in support of gathering more information here in Government Oversight Committee, then passing that information over to the Tax Committee. Sen. Bennett asked if it would also be inclusive of Sen. Keim's recommendations, because one of the recommendations on the report was to engage FAME in their thoughts.

Sen. Libby brought up how the Chairs and staff of OPEGA were talking about perhaps skipping the October GOC meeting to allow time for staff to catch up on work projects and for the GOC to have enough on the agenda to make that time useful for the committee. That would put their November meeting as the second Wednesday in November, which is roughly a 60-day period where they could try to get FAME to give the committee their action plan. It sounds like they are going to pause on policy discussion for a bit. He is seeing this policy discussion taking up a bigger space, more time, and carrying through into January, February and March, and getting FAME's perspective on these policy tweaks probably is going to be a back and forth between DECD, stakeholders and the legislature. Sen. Libby suggests that they can ask their opinion of these policy questions now or wait for that conversation to develop later in the year.

Sen. Keim stated that she likes that they will be likely sending it to the policy committee (Taxation) and that they will be taking up whatever legislative changes and the debate around that. She is just wondering, since they are talking about pushing it out further for FAME to be giving a little more information ahead of time so that consideration is part the whole. She thinks that may be helpful to the policy committee because it is a short session coming up, and they might take up some policy considerations in the next session starting in January.

Sen. Libby suggested that they could add Chris Roney from FAME back into the meeting to help with this part of the discussion. Another thought is that FAME will often say to the policy committee on a question that it is a policy decision of the legislature, they might respond with their opinion on a proposal but they might also just defer. Sen. Libby then suggested that Mr. Roney could answer those thoughts for the agency.

Mr. Roney stated that FAME is more than willing to respond to the request for an action plan on the management items. He does agree with the idea of having the policy debates with the Taxation Committee, both in terms of the policy around what the goals are but also what is the adequate level of recording to try and demonstrate those goals because they did add a bunch of reporting requirements that they have just implemented as that was included in part of the new law. Trying to integrate whatever new requirements they want to talk about into the ones they just implemented will be an important discussion to have with them. They would be happy to give their comments on the value of all the things they think they can achieve in terms of getting reporting. They have opinions on whether particular business enterprises ought to be included or not but he believes that is a discussion for the legislature to debate, because of things like film or exporting businesses are important to different constituencies.

Motion: That the GOC send a letter to the Finance Authority of Maine to:

- Request that FAME follow-up and provide the GOC committee with an action plan to address the Recommended Management Action described in the OPEGA report on Pages 28-29 of the OPEGA report related to: (a) data collection, (b) data analysis and (c) data reporting;
- Invite FAME to provide comment on defining goals and what success looks like in terms of program outcomes, as described under Recommended Legislative Actions on Page 25-27 of

the OPEGA report, to provide background to assist the Legislature in future policy discussions; and

- Request that FAME follow-up on the requests for data and information made by Senator Bennett during the Public Comment period; and Request that FAME report back on these items at the November 10, 2021 meeting

Vote: Motion (above) made by Sen. Bennett, second by Rep. Millett, passed by unanimous vote 10-0, 2 members absent. (Rep. O'Neil voted on the motion in accordance with the GOC Rules.)

• **Presentation – Quarterly report back from the Maine Commission on Indigent Legal Services**

Justin Andrus, Executive Director of the Maine Commission on Indigent Legal Services (MCILS), explained that the last quarter at MCILS has largely seen them working to implement the plans that they have made, and running into some road blocks, some of which have been cleared since the week before, when he sent the report to the GOC. For example, they were able to post the six positions that had been granted in the supplemental budget last Friday, and that hiring process is now underway. Mr. Andrus states that that has been the biggest obstacle to making progress on the auditing and oversight front, because they still haven't had the people to do that work. They are looking forward to that and have been getting many inquiries, asking for details about what the jobs might have. The openings will be for posted 30 days so they will begin the hiring and onboarding process in October and hopefully they will have people ready to go by November 1st. That is the timeline they think is realistic. They are going as quickly as they can through that process. Mr. Andrus stated that he had given the committee a lot of data when they last had a meeting, and he had asked if they wanted a review of what he had written prior, and the committee had suggested that may not be necessary. He is happy to address anything that the committee would like him to, but he doesn't want to bore them by repeating what he already has submitted in writing.

Sen. Libby asked Mr. Andrus to briefly summarize two parts of the report for the committee and people watching the meeting: their budget situation and their case load. Mr. Andrus explained that their budget is healthy at the moment, which is excellent. They have received adequate funding in the supplemental budget and they also received \$4 million in Covid Relief Funds, to address the case surge issue that they are seeing. For the moment they appear to be in relatively good shape. They have very limited carryforward in terms of encumbrances from last year. They now understand that the money that was carried forward from the fiscal year 2020 budget is available to them. They need to go through a financial order process, but it looks like they should not have a difficulty meeting their financial obligations this year. He did state in his report that it is possible that they could have an issue for next year, but he thinks given the way the surge in cases is going now, it looks like that is unlikely to be a problem. Historically MCILS has run into the red and then caught up, so this is a more tenable position to be in. The case load issue is a fairly significant issue. They are seeing a huge surge in the number of cases MCILS is being asked to provide lawyers for, while at the same time their lawyers are continuing to express some dismay about the change in the practice environment. Mr. Andrus provided the committee with the responses to the survey of attorneys that they did in August. The attorney responses were fairly consistent; there are still some people who are unhappy with him or MCILS and they are working on those issues. There are a lot of people talking about the difficulty to return to a primarily in-person practice regime. He has been trying to communicate with the Judicial Branch about making the practice environment work for attorneys, particularly those who have to travel from county to county, in an effort to keep as many people as possible on board. They are seeing a massive surge in the number of new filings. He explained in his letter that they had a historical average of about 26,000 cases a year in the 5 years before the pandemic, they were up to 28,000 in fiscal year 2021. They are on track for about 31,000-36,000 cases in fiscal year 2022. It is a massive surge of cases against declining numbers of

attorneys participating. Although that is problematic, they are doing the best they can to foster a practice work environment that is going to work for people and have them not disengage. They have eliminated the people who were frustrated by the rules, as there were some people who left earlier in the year for that reason. However, he noted if they'd like to come back and follow the rules they can do that. They also do seem to have fewer people concerned about the rate, so the increasing rate of compensation appears to have stemmed the tide in terms of those people. The people who are leaving now frequently are saying they will come back, they are not leaving the program, they just can't accept new cases because their work load is too high. That's a function of the actual case load being high and having moved from Zoom, where people were allowed to be in several courts in one day, to being back on the road. He has really been pursuing the Judiciary about Zoom and making it possible for lawyers to appear remotely, especially in the outlying counties where a quarter of their lawyers are. He states that he had gotten a request from a judge for their lawyer count in Washington county. There was a total of 4 attorneys in Washington county doing Washington county cases, 2 of those will only do lawyer of the day. The judge has concerns about how Zoom works from the courts' perspective, but there is no way to get an attorney from Machias to somewhere else unless that attorney is allowed to appear remotely. That is the dialogue, as it's not really a negotiation as they don't have the power to negotiate with them.

Sen. Keim noticed a lot of comments from the lawyers on the survey had to do with Zoom and e-filing, and she recognizes that they are having difficulty getting enough lawyers. Sen. Keim continued that with talking about practice environment with the backlog they have and not enough lawyers to take on the cases, are the courts open to this idea of continuing the zoom and e-filing even though they have shifted back to in person meetings?

Mr. Andrus responded by breaking down the answer into 3 major subject areas that have changed the practice environment; Zoom, e-filing and docketing. The docketing issue is that the courts want to make sure that no court time is wasted. So, they want to make sure that they have a number of cases ready to go, so if one case settles, the next case can slide in, which makes sense from their perspective. The problem with that is that it requires the attorneys to be preparing multiple cases in multiple counties in the same time period, which is impractical.

On the issue of e-filing, the US Postal service has formally downgraded its performance expectations of First-Class Mail to 5 business days, which really means a week. That means that with courts pumping out very short notices to get people into court and fill up the court time, it is impossible to rely on the USPS to safely file for example, a motion to continue a proceeding. Lawyers now have to get in the car and hand deliver. It sounds like e-filing is a matter of convenience, but it is really a serious matter of efficiency. The courts have explained to him that there are a number of reasons they were opposed to e-filing, one of which was the cost of printing all of the stuff lawyers were sending in. They are actively working with the IT department to put printers in the clerk's offices and having a printing facility of some kind that allows the MCILS lawyers to print directly to the clerk's offices, so the clerks take them off the printer as they would opening mail. It is going to be really expensive, but he thinks it is going to be less expensive than continuing to pay people to drive. They are working with the courts on finding a solution.

On the issue of zoom appearances, he has interest from the Chief and Trial Chiefs in the district and superior courts, but they have explained to him that Maine's tradition of judicial independence really prevents the judicial management from imposing precise structures on the judges. Even if they were inclined, the chiefs can't tell the judges that they shall allow people to appear by zoom. He has been trying to work with the judges he engages with to promote the use of zoom. In addition to the survey responses you in the material he has provided, they get lots of emails and frequently see emails that say that lawyers will go to Aroostook County to take a case but only if the administrative proceedings until they get to the trial will be over zoom. He doesn't think that zoom is a substitute for in person, in person is much better, but at this point zoom is necessary to avoid the bleeding, and the judiciary is starting to understand that. He

has been as vocal with them as he can without treading into being impolite, to say that someday soon I may not have a lawyer for them if they don't allow the lawyer to appear by zoom. Mr. Andrus continued saying that on the issue of docketing, he has been much less successful. The judges want the dockets to move so that they don't waste a moment, which he understands and respects but it doesn't work. He has many examples but a good one is a lawyer with cases in two different counties had to prepare both cases although they cannot be in two courts at once. The lawyer was required to be prepared for the case in the second county if the first case folded. Meaning the lawyer had to be prepared for a case that may not take place, and then prepare everything a second time if the case for the rescheduled date. There is a huge duplication of time, prep work and cost for MCILS.

Sen. Bailey asked Mr. Andrus if he can get information on the number of attorneys and caseloads and if he could get a break down between criminal defense, protective custody cases, juvenile cases and involuntary commitments. Mr. Andrus confirmed that he would get that information for Sen. Bailey.

Rep. Arata asked if there is anything that the Legislature can do to help the judiciary move to zoom and e-filing? Mr. Andrus states that because of how the AOC works he does not know the answer to that question.

Rep. Arata asked for clarification regarding the billing, because several comments stated that if they don't bill on time, they don't get paid and why is that, as it seems harsh. Mr. Andrus then explained that there is an existing rule that predates him, that states that bills submitted after 90 days shall not be paid, but he is hoping that a rule change will be put in place that allows him to have some discretion to allow those late billing payments. Rep. Arata followed up by asking when he thinks that rule change will be put in place. Mr. Andrus responded that at their last Commission meeting they were talking about a broad-based overhaul of the rules that need to be brought into line with the work they are actually doing, but he doesn't have a timeline for when those rule changes may occur.

Sen. Keim asked about any changes on the determination of indigency. Mr. Andrus explained that there is no ongoing operation to make changes to the determination of indigency but that they did update financial guidelines for the year which is just a change in the numbers. The screener operations have been diminished, because they did have two screeners leave; a new screener will start soon. They are still interviewing for the Portland position. But in terms of the functional determination, there isn't really a new change there.

Sen. Keim then asked why it seems that there isn't really consistency in determination of indigency across courts. Mr. Andrus explains that is correct, there isn't consistency. The determination of indigency is not an MCILS function. The screener, when there is a screener, helps a person fill out a financial application, and the court decides on whether or not a person is indigent. MCILS has no input there. He believes this is something they need to work on. In his report he talks about the memorandum between MCILS and the AOC, and they want to broaden the MOU to include things like screener operations and indigency determination, but at the moment the courts are supplying indigency differently. He has no idea how many people there are and he doesn't have data on that nor the ability to obtain that information at the moment. It is also not something they can directly control; they have rules, but where they are applied inconsistently is outside of his ability to fix. To elaborate, he explains that in many areas he has concluded that they are running into issues that are external to MCILS so he can't cause for things to happen; he can ask for them to happen, but it is the response of people outside of the agency that can they rely on. He states that it is extremely frustrating to get to a point that they cannot improve client security for communications with counsel because he can't get dialogue going with DOC that is reciprocated, he can't improve filing issue because he can't get communication with AOC that is reciprocated. He hasn't stopped pushing for some of these changes but he can't make other people comply with his mandates.

Sen. Libby asked about page 4 of the report regarding audits, noting that during the interim Mr. Andrus did some work on developing the processes for audit but have not been authorized to hire the attorney staff you need for that process. Sen. Libby asked if that information changed since writing the report. Mr. Andrus explained that yes, during the week prior they were approved and posted 6 new positions open for hiring, setting a 30-day period to interview and hire promptly. Sen. Libby asked how would he rate the current process compared to the process of internal review say about 3 years ago. Mr. Andrus said that it is hard to quantify, but he can say that the process is better now than it was 9 months ago when he came on board and that its still imperfect given the volume. They are doing a much better job communicating expectations and are getting fewer instances where people are violating those expectations. They are seeing many fewer high hour triggers, they are seeing more people be more precise for accounting errors, and small errors are being corrected. He thinks that, to be fair, what they are doing is too sporadic to be considered an audit system as the rudiment of an audit system is that it is consistent, and its utility lies in part that its process can be reproduced. It is still a lot of review of vouchers and reviewing non-counsel invoices, which is the most error prone area in the audit system, but there is really good accountability taking place.

Director Nixon explained that OPEGA has been working on a remaining piece of work in the indigency determination and collections from the partially indigent clients. That was piece of work that was slated to be finished up this fall. They did collect information about consistency of indigency determination. OPEGA is trying to figure out a strategy to have that wrapped up when they have resources available. She will be taking stock of what they have and what they have heard in this meeting. Then she will hopefully talk with the GOC next meeting about how to wrap everything up while still finding answers to the two remaining questions that were outstanding.

• **Presentation – Introduction to Child Abuse and Prevention Treatment Act (CAPTA) Review Panels**

Bobbi Johnson, Associate Director of Child Welfare Services presented (A copy of the presentation is attached to the Meeting Summary).

Sen. Libby asked Ms. Johnson about an update on The Maine Child Welfare Advisory Panel minutes from May, June, July, and August's meetings. Ms. Johnson answered that she will have the minutes updated for May and June but they do not meet in July and August.

Sen Libby asked if the statue establishing the Child Welfare Advisory Council require an OCFS staff member to serve as co-Chair or were they elected by the group, because often times advisory groups do not have staff who are being overseen serving as leaders on that advisory group. Ms. Johnson replied that it was built into the redesign of the group. Initially it was a very department lead group of individuals and have shifted it to a citizen review panel with Deb as the citizen co-chair. It is not a requirement of the CAPTA legislation.

Sen. Bailey asked in relation to the CRPs, what role if any, what role is there for attorneys that represent parents in child protective matters. Ms. Johnson replied the Justice for Children's Task Force, includes parents' attorneys. The Maine Child Welfare Advisory panel has been recruiting members, including a parent's attorney to be a part of that panel. Child Death and Serious Injury Review Panel has added two district attorneys to their panel.

Debra Dunlap, Chair of the Maine Child Welfare Advisory Panel, presented to the GOC (A copy of the presentation is attached to the Meeting Summary).

Sen. Bailey asked Ms. Dunlap about helping to fill an open position of a legislator on the panel, who makes that appointment and why it hasn't been filled. Ms. Dunlap has had conversation with some legislators, but

once the session starts they find it very hard to make it to the meetings. It is one of the required representatives written in the bylaws, and they would love to get that position filled. They meet the first Friday of every month from 9am to 11am, and have them over zoom for convenience to all members. There is no appointment of the position, it is more of an invitation or a volunteering of that legislator. Any legislator who does want to fill that spot could contact Ms. Dunlap or Director Johnson, they would have to be voted in through the full panel.

Sen. Deschambault said she is surprised that these positions are by invitation and not reviewed by the commissioner of DHHS. Sen. Deschambault also asked about the open seat for representation of someone that works in the substance abuse, recovery and treatment area on the panel. Ms. Dunlap explained that these are citizen review panels and so they are not appointed panels, it is designed to be a citizen volunteer program. Ms. Dunlap continued by stating that they do have some people from the substance abuse, recovery and treatment programs on the panel, but they are already holding a seat for a different mandated representation and the panel does not allow one person to hold two positions/roles in the panel. Sen. Deschambault then asked where their committee submits its reports. Ms. Dunlap explained that they don't review individual cases, but they take overall feedback and look for patterns and identify ways that the whole system can be improved. The reports used to be sent only to the mandated federal recipients, or to anyone that asked for it, but they decided that there needs to be a more formal process to get this information to the Maine Legislature.

Betsy Boardman presented to the GOC (A copy of the presentation is attached to the summary).

Sen. Deschambault asked if she had a hard copy of her testimony she could submit. Ms. Boardman answered that she would send it in the next couple of days.

Sen. Bailey asked if the task force has or is looking at preventive legal advocacy. Ms. Boardman answered that that issue has not been addressed specifically, but it is on the national radar. Last year they had a huge focus on preventative child family services. Sen. Bailey suggested they add that to their future agenda, because studies are showing that it is helpful to the families, less costly for the state as it helps prevent child abuse and neglect and helps prevent children from even entering the foster care system.

Sen. Libby asked about how many times they have met this year and the minutes on the meeting in march. Ms. Boardman explained that they have quarterly meetings and they met in March, June, September, and December and will have the minutes posted.

Mark Moran, Chair of the Maine Child Death and Serious Injury Review Panel, presented to the GOC (A copy of his presentation is attached to the summary).

Sen. Libby asked about the statues that prevent information from being shared. Do other states have the same restrictions? How would we create a work around to be able to get timely answers? Mark answered that he is not aware that other states have similar restrictions. The reasons for the prohibition, have to do with 2 factors, one is the potential to create conflicting duties for their panel members. The second is that the statute states that the panel's findings are confidential. For example, if one of the panel members were a police officer that is involved in a case, and the panel finds some new information, the officer would then have a conflict of interest between the confidentiality of the panel and his public duty to let the courts know information about a case. Sen. Libby asked follow up question based on the answers.

Sen. Bailey read the statutory purpose of the panel. She asked if the panel is established by the department, and the panel makes recommendations to the department, and the only publicly shared documents and information is shared and filtered through the department? Mr. Moran said yes that is correct, but they could also send things to outside entities and that information would then be public that way. Given the

confidential information based on the children involved, they don't make recommendations based on a case by case basis. Sen. Bailey asked if the attorneys involved on the panel are all state attorneys? Moran answered confirming that.

Sen. Deschambault asked about there being no changes to the statutes since 1993. She asked what is the panel's authority if the panel had a recommendation to revise the statute, or do they have to recommend it to the commissioner of the department to make the change? Mr. Moran answered that there has been changes to the statute but none that directly discuss what the panel does and their structure and function. Mr. Moran clarified that they have made recommendations within their meetings to the department specifically related to statute changes over the years and when the department does propose its bills he is confident that those proposals are at least in part fueled by the panel meeting discussions with the department.

Unfinished Business

- None

Report from Director

- **Status of projects in process**

Director Nixon explained provided an update on OPEGA projects. For the Maine Commission on Indigent Legal Services, there is a piece of work on indigency determination that is going along and they are trying to figure out how to wrap it up and when, based on the demands of the child protective services work. The Full Evaluation of the Credit for Rehabilitation of Historic Properties which is a tax expenditure review project, is in the process of the report being drafted and ready to present to the committee in November. OPEGA is actively working on the Full Evaluation of the Research Expense Tax Credit. Also, in the tax arena, they have their annual review of all tax expenditures that are classified for expedited review, and are actively working to prepare that for the tax committee. Staff are also engaged in the tax expenditure review working group that is looking at the overall tax expenditure review process with the GOC and TAX committee.

For Child Protective Services, they've been working actively in developing a work plan for pieces of work that are due in January and March. A member of the OPEGA staff attended the systems mapping meetings at DHHS, that was part of the Casey Family programs and their subcontractor Collaborative Safety case reviews under contract to DHHS. They will be looking to schedule a presentation of that report when it is due later in the fall. Staff have been initiating preliminary research but it is getting folded right into the project which includes reviewing relevant state and federal laws and rules, relevant evaluation projects and reports that have been done by other states to help inform and give guidance to develop an effective and efficient project. They are scheduling meetings with agencies involved and the groups the committee had just heard from will be a big part of the work for the report that's due in January on the system of oversight of child protective services broadly. OPEGA will be doing a lot of follow up work, speaking to those panels and learning more about them, to be able to report back to the committee on how that system works together and areas of improvement.

Planning for upcoming meetings

Sen. Libby states that the chairs are proposing that the committee skip the October meeting to make time for the OPEGA staff to work on the projects the committee has tasked them with. Sen. Libby asked if there is any objection to skipping October and reconvening in November. There was no objection to skipping October and no objection to holding the meeting over zoom.

Next GOC meeting date

The next GOC meeting is scheduled for Wednesday, November 10, 2021 at 10:00 a.m. and will be held electronically

Adjourn

The Chair, Sen. Libby, adjourned the Government Oversight Committee meeting at 1:20 p.m. on the motion of Rep. McDonald, second by Rep. Stover, unanimous.