



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

MEMBERS:

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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
September 18, 2024

Call to Order

The Chair, Sen. Hickman, called the Government Oversight Committee to order at approximately 9:35 a.m.

ATTENDANCE

Senators: Sen. Hickman, Sen. Keim, Sen. Bennett, Senator Duson (via Zoom), Sen. Tipping, and Sen. Timberlake

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

Legislative Staff: Peter Schleck, Director, OPEGA
Jen Henderson, Senior Analyst, OPEGA
Kari Hojara, Senior Analyst, OPEGA
Virginia Ryan, Temporary GOC Committee Clerk

Others: Anya Trundy, Deputy Commissioner, Department of Administrative
and Financial Services
Bobbi Johnson, Director, Office of Child and Family Services, Department of
Health and Human Services

Introduction of Committee Members

The members of the Committee introduced themselves.

New Business

(To watch this meeting - the recorded Live Stream can be viewed here: [September 18, 2024 GOC Meeting](#))

Meeting Summary – August 21, 2024

(A copy of this Meeting Summary can be found here: [August 21, 2024, GOC Meeting Summary](#))

The Committee accepted and approved this meeting summary.

Procurement

Senator Hickman welcomed DAFS Deputy Commissioner Anya Trundy to the meeting, for a presentation on state procurement processes, as the Committee further considered whether to task OPEGA with a review on this topical area, in response to a formal request from House Chair Fay.

Deputy Commissioner Trundy’s presentation slide deck may be found at the following link: [DAFS Procurement Presentation September 18, 2024](#)

Ms. Trundy provided an overview of the procurement process, including an effort to be responsive to Committee Member questions at the August 21, 2024 GOC meeting.

Ms. Trundy offered a definition of procurement: legal authority for the state government to contract for goods and services and distribute grants through the private sector. The authorizing statute for the Bureau of General Services, Procurement Division, is [5 M.R.S. § 1812](#). The Office of Procurement Services is the conduit for state agencies to engage private sector businesses for goods and services that state government does not provide directly. She explained that this presentation does not pertain to contracts for public improvements. And the Department of Transportation has its own authority for roads and bridges.

Deputy Commissioner Trundy described two key tenets of state procurement: 1) it is a competitive process; and 2) awards are made to the best-value bidder (best available, although there is discretion not to make an award).

Rep. Fay asked how the agency defines “best.”

Deputy Commissioner Trundy said that cost is an important component of best value, but the process also weighs whether the proposed services meet the scope of need and whether the vendor’s qualifications fit the project. Determination is based on the best information available at the time of the bidding.

Rep. Mastraccio said it is really important a Request for Proposal (RFP) is developed to really articulate what’s needed. She asked how that is developed and who works on it.

Deputy Commissioner Trundy said she would address that question shortly, then described the core values and guiding principles of Maine’s procurement process: competition; an open, fair, and transparent process free of influence and prejudice, conducted in the public view. She said that procurement is centralized to reduce duplicative effort, and to prevent individual agencies from having to develop internal expertise on procurement. DAFS works on making good use of taxpayer resources, and it has tried to create a one-stop shop for vendors that want to work with the State of Maine. She provided links to policies and procedures.

Deputy Commissioner Trundy said that DAFS Procurement serves as a resource and a partner to contracting agencies. The agencies oversee the subject matter of each RFP. They develop RFPs intended to

comply with laws and policies and mitigate the state’s risk exposure. DAFS reviews and offers any improvements, details needed, or suggests whether any part of the RFP is too specific. Agency staff make up the bid proposal evaluation team. DAFS guides them through the process. Templates are available.

Sen. Bennett asked who is on the DAFS Procurement team.

Deputy Commissioner Trundy explained that the procurement office is at a lower staff capacity than desired. At any given time there are 12-15 staff. Procurement has a Director, and team members who serve as the staff coordinators for each RFP.

Sen. Bennett asked whether the staff specialize in particular departments or areas.

Deputy Commissioner Trundy didn’t know definitively. She gave a DHHS example: they have dedicated staff internally that have expertise in drafting contracts and RFPs. Other Depts do not have dedicated staff; a division director has this responsibility.

Sen. Bennett said he would like to see this explored more—how DHHS competencies fit with the role of DAFS. Senator Bennett further stated that many of the issues he has heard about concerning procurement matters are DHHS matters.

Sen. Hickman asked for a more granular organizational chart, and the Deputy Commissioner offered to provide that.

Rep. Millett asked about the development of RFPs and scoring scales. What is the level of review by Procurement staff on the quality of review panel members, consistency of scoring scales, and the level of clarity and understandability for the bidder population? Is there a rule of thumb on consistency of scoring and how closely the division oversees and gives approval of the RFP?

Deputy Commissioner Trundy described resources available online for contracting agencies: guidance documents, training videos, and workflows for each stage of the process. Staff work to make sure there is clarity for bidders, and that each RFP process is fair. Review occurs on every RFP. Staff are experienced and advise departments on revisiting an RFP if needed to yield the desired quality and specificity in bid proposals they desire to receive.

Senator Hickman asked for definitions of the various “Request” abbreviations.

Per Deputy Commissioner Trundy:

- RFPs are Requests for Proposals;
- RFAs are Request for Applications, used primarily in grant making;
- RFIs are Requests for Information; and
- RFQs are Requests for Quotations, used primarily with commodities.

Rep. Mastraccio asked when legislative committees of jurisdiction ever, if at all, get involved in the process.

Deputy Commissioner Trundy said the main role of legislators is that the funding has come through the legislative appropriations process. Details and requirements the Legislature wanted will be in the

legislation. On many contracts, stipulations also come through federal government policies connected to grants.

Sen. Hickman asked whether Procurement has the authority to privatize something through this process to meet statutory requirements.

Deputy Commissioner Trundy discussed how Legislation was enacted four or five years ago spelling out specific requirements when a government provided service is going to switch to the private sector as the mode of delivery. Deputy Commissioner Trundy did not know of any examples of that being used since enactment. She said that legislation does not always stipulate when services will be contracted out or provided internally. If the state is not already performing the service themselves, legislation does not always dictate how the agency gets the job done. In decisions to use procurement, state government may not have the expertise, or it is a short-term project that agencies do not have the headcount to get done. Aspects of this may be outlined during the Fiscal Note process.

Deputy Commissioner Trundy explained that there is a standard process for projects over \$25,000 and referred the Committee to page 7 of her slide deck presentation. That risk threshold increased from \$10,000 last year. Many agencies felt this needed updating based on inflation. There is a simpler procurement process for smaller RFPs.

Sen. Hickman asked if that has proved beneficial. Deputy Commissioner Trundy said it has only been in effect for 30 days, but that it was something a lot of agencies were seeking.

Sen. Bennett asked whether the risk threshold increase was a statutory change.

Deputy Commissioner Trundy said DAFS pursued it in a Department bill and it is in statute.

Deputy Commissioner Trundy turned to Evaluation Teams and Scoring: Agencies select their own evaluation teams. DAFS has a recommendation that teams include the staff person responsible for the project (RFP Coordinator), a financial expert, a business expert, and a subject matter expert. There may be an IT team member from Maine IT, if there is an IT component to the project. DAFS provides a suggested scoring rubric. Agencies determine how to give weight to various components including cost (at least 25 points on a 100 point scale), bidder’s experience and qualifications, proposed services and alignment with desired deliverables of the RFP.

Rep Fay asked how the scoring rubric is established and whether it’s the same for every RFP.

Deputy Commissioner Trundy said the scoring is not the same for every RFP process. Agencies are in charge of recommending what they think the weighting should be. There is flexibility for agencies built in.

Sen. Timberlake said one of his constituents suggested that there is a 10% advantage for in-state contractors.

Deputy Commissioner Trundy said the state does not have a designated preference score for in-state. In-state bidders are favored in circumstances of exact ties [see [5 M.R.S. § 1825-B\(9\)](#)]. There has been legislation about an in-state preference in the last three Legislatures, and DAFS has testified against (ONTP). Their concern is that it would discourage competition. It might significantly cut down on bids. Competition pushes bidders to provide best price and best services. In-state bidders are winning more than

50% of contracts. Being local helps bidders offer best price and best services offers. She recognized that this is a big political discussion with varying opinions.

Sen. Tipping asked how “the best interest of the state” provision figures into the scoring.

Deputy Commissioner Trundy said that “the best interest of the state” is interpreted to be the combination of cost and service the state receives. There is a complicated question behind that, she acknowledged. Ms. Trundy did not think that this provision is part of the scope of what is being contracted. It is often about very specific goods and services. Federal funding may dictate what can and cannot be a factor in scoring. The federal government is primarily concerned with the stated purpose for which the funds have been dedicated, and the ways in which funds could be leveraged to provide a secondary benefit may be considered unallowable expenses.

Sen. Tipping stated his concern that this “best interest” standard is being ignored and asked whether it is taken into consideration in any other way, including in the appeals process.

Ms. Trundy replied in the negative, and further stated that the concern is that this is a very subjective standard to apply. There are more concrete factors in the scoring process. There is a hesitancy to destabilize the process or increase the susceptibility to appeal. We need concrete criteria to fairly compare, not externalities.

Sen. Hickman and Sen. Tipping asked where in the statutes this “best interest” is found.

Deputy Commissioner Trundy included an excerpt in her slide deck presentation: “[Title 5,] [§1825-B, sub-§7](#) – “Awards to best-value bidder. Except as otherwise provided by law, competitively awarded orders, grants or contracts made by the Director of the Bureau of General Services or by any department or agency of the State must be awarded to the best-value bidder, taking into consideration the qualities of the goods or services to be supplied, their conformity with the specifications, the purposes for which they are required, the date of delivery and the best interest of the State.”

Sen. Tipping stated he would like to discuss how we can meet that legal responsibility. He thinks that “best interest of the state” further defines “best value”, and Sen. Hickman agreed.

Rep. Mastraccio said that Sanford has a provision for giving weight to bids that are within a certain percentage range, and local or Maine companies would be given extra consideration. This is still intended to get the best deal for taxpayers.

Sen. Bennett said that quantifying the “best interest of the state” is well-trodden ground. The private sector has higher levels of sophistication about quantifying externalities or non-financial factors like building organizational capacity, supporting community, treatment of employees and stakeholders. DAFS should be able to quantify this a bit more. He does not think DAFS should ignore those as “externalities” when statute says we should take it into account. We have not caught up in terms of our own procurement policies.

The Deputy Commissioner said this is part of give and take between the Executive Branch and the Legislature. If Maine is going to make a change, legislative input is needed. If interpreted on their own, there might be changes from Administration to Administration in how “best interest of the state” is implemented, or the Legislature might not like the cost implications.

Sen. Bennett stated that the first question is, what does management recommend? What do you recommend, what are the options; make the proposal so the Legislature can react, get buy-in, and it can be placed in statute.

Rep. Fay said this discussion makes the process and the questions that an OPEGA review could answer clearer and makes the case that GOC should add procurement to OPEGA's work plan.

The Deputy Commissioner said that the scoring packets are all made available online. She encouraged Members to look at those. They give confidence in the care that's taken in the process. This is valuable information for bidders. Also, bidders are entitled to see competitors' proposals (after bid), with some possible redactions, but perhaps only one can search by RFP number or vendor.

Rep. Fay asked how long this information has been available.

Ms. Trundy suggested at least more than six years, the time she has worked at DAFS.

They are also working on system upgrades, and a bidder can reach out to the office in the meantime if online information is insufficient.

Deputy Commissioner Trundy turned to IT procurement. Maine IT was established 20 years ago. The state requires IT procurement be engaged to protect confidential information and systems. There are more expectations now. Agencies push back a lot on additional requirements related to IT procurement.

If a procurement has any of these components, the project is an IT Services contract. Agencies resist because this adds time and complexity. Sometimes it gets caught later in the process, e.g., when they are just about to publish an RFP. The Chief Information Office for Maine may say they have to revise and add provisions regarding risks. IT concerns should be recognized earlier in the process. Proposals have to include technical specificity. Government vendors are now subjects of cybersecurity attacks, so DAFS and others are taking responsibility up front to protect Maine's interests.

Sen. Hickman asked how these considerations can be identified earlier.

Ms. Trundy indicated that they are having some success doing this, but at times an agency disputes that there are IT components requiring something other than that found in a conventional services contract. Those evaluations need to be done by persons with experience with data security and systems architecture. There is a need to avoid backtracking by everybody starting out looking at requirement. There are posters for staff with guidelines for IT procurement, with questions to ask.

Rep. Arata expressed concerns with large IT systems procurements like Workday, Kathadin (OCFS), and whether this is common or unique to Maine.

Ms. Trundy acknowledged that such new tech projects, especially big enterprise projects, are going to have issues or challenges. At times, causes relate to funding, with the private sector devoting 10% of budget to technology. State budgets only devote 3%. Outside contractors may come in, and internal staff do not have this element in their job description. Off-the-shelf solutions are going to be easier implementations and are sought, but the amount of work is often underestimated. A project management office has been re-established, which is a best practice, about four years ago. It will, over time, save money and lost time for

state. There is an increase in technology success rates when project management is applied. Independent validation and verification teams are also being used.

Deputy Commissioner Trundy next addressed waivers of competitive bidding. She described the seven statutory circumstances in which this is permitted. [See slide 10]. Often it is because the contract is under a cost threshold, or that the item is only available from one source. They require documented rationales for review by procurement staff, and these can be returned to an agency if deemed insufficient. For contracts greater than \$1 million, review by the six-member State Procurement Review Committee is required. All notices of intent to waive competitive bidding must also be publicized for seven days on the Procurement website. These are subject to challenge by prospective bidders.

Sen Bennett asked about contracts that are extended without further competition.

Deputy Commissioner Trundy indicated that the standard contract is five years: initial two-year contract; two-year renewal; and a one-year renewal.

Senator Bennett then referenced his prior questions about the contract to manage the Juniper Ridge landfill. Six years before this 30-year contract, there was an effort to extend it by six or eight years. Senator Bennett stated that of the terms described by Ms. Trundy, he did not see where such a timeline fit in to the permitted schemes.

Ms. Trundy responded that Juniper Ridge is unique because it has its own provision in statute. She also said the contract had not been extended at this time. Ms. Trundy explained how there were issues with a potential expansion of the landfill "adjacent" to the matter of the extension of the existing contract. For example, if the Department of Environmental Protection does not approve an expansion, there will not be a need for contract extension.

Senator Bennett reiterated concern over this situation, and about any exceptions to the regular course. Senator Bennett requested additional information about the Juniper Ridge matter, including due to the apparent lack of transparency. What is the status of the request for an extension; why a move to a public comment period, and please provide transparency of the financial benefits for the contract, and what parts of statute create this special circumstance, and does the Administration have a position on whether this contract should be handled differently. Ms. Trundy alluded to certain advantages the State currently enjoys that may go away, concerning liabilities for the site.

With regard to grantmaking, there are similar processes. RFA differences from RFP: not driven by market forces. There can be multiple awards based on pool of money available.

Rep Fay asked whether RFA's go through the same level of analysis, have same level of technical assistance, and offer opportunities for input? Do agencies develop the RFAs then get guidance from DAFS? And for potential applicants?

Ms. Trundy responded that there is technical assistance available to the Departments. There is not interaction between potential applicants and procurement or DAFS. There are strict guidelines on appropriate communication.

Ms. Trundy indicated that 1 to 2% (4 out of 200) of award decisions get appealed. In most instances, the original award is validated. The appeal panel validates or invalidates the original award. There are

provisions regarding who is an aggrieved person, time limits, and requirements to demonstrate that there was a legal violation, fundamental unfairness, or an arbitrary and capricious award decision. The appeal decision may be appealed to Superior Court.

Sen Hickman asked about appeals to contracts vs grants.

Ms. Trundy did not know but would follow up. Grants may have more appeals because more are awarded. They are all heard together.

Sen. Hickman asked whether the agency discourages an appeal? How often? How many appeals are discouraged by the agency? Sen. Hickman understood that an appeal stayed all other awards and this might be a reason.

Ms. Trundy said agencies should not be discouraging appeals. Applicants have the right to appeal.

Senator Hickman followed up on his previous question about the universe of all cooperative agreements?

Ms. Trundy said that cooperative agreements are one of the exceptions to the competitive bidding requirement and referred Senator Hickman to the listing in the DAFS Commissioner’s second letter to the Committee in preparation for this discussion, dated August 19, 2024. [See [11082 \(maine.gov\)](#)] The agreements listed in that letter are those included in the required annual reporting for 2023. The 2024 reporting is expected in the next couple of months.

Sen Tipping asked about the non-emergency medical transportation contract. The effects on the ground are losing transportation infrastructure on the ground in some areas of the state. The fact that the RFP wasn’t as much about cost, but more about the offer and the quality. How is quality assessed?

Deputy Commissioner Trundy indicated she needed to be careful because the matter is on appeal to the Superior Court.

Ms. Trundy said that experience with a bidder may be factored, even from outside sources, including consumer complaints. Ms. Trundy referenced a memo that DHHS recently sent to Senator Bennett answering 25 questions and would provide insight.

Senator Tipping also referenced a recent Maine Monitor article on this matter. See [Patients, advocates say Modivcare fails to live up to agreement \(themainemonitor.org\)](#)

Senator Tipping asked Ms. Trundy to discuss the consensus vs individual scoring for a process like the award of this contract.

Ms. Trundy stated that the ultimate score is a result of consensus scoring. Members keep individual evaluation notes, but not individual scores. Scoring is done by consensus, it is not an averaging of individual scoring. In the event there is only one bidder, there is no assigned scoring, only verification that the requirements of the RFP have been satisfied. There are technically eight separate awards.

Senator Tipping referred to notes from reviewers and that some say they reviewed thousands of pages in a single day, and asked if that is common?

Ms. Trundy indicated that it depends, and that this was an exceptionally large proposal.

Senator Tipping said it did raise concerns with thoroughness of review.

Senator Tipping also commented on the relative advantages or disadvantages of bidders based on size and resources, e.g., local agencies vs. large multinational corporations.

Deputy Commissioner Trundy acknowledged the disparity. Experience begets winning awards. The ability to provide services at a high level with level of flexibility. Economies of scale. Contracts range a lot, and there are access points for all size bidders. DAFS is concerned with bringing more bidders in. They gain experience bidding, servicing a contract, allowing for organizational growth, then they are eligible for bigger things. DAFS is concerned about competition, that there are multiple bidders even for large contracts.

Senator Tipping asked if there is anything now that could help mitigate that difference?

Ms. Trundy suggested there might be ways that the RFP can be crafted, if it's the agency's objective, and perhaps some of that is already being done.

Senator Tipping asked how reviewers look at major differences in service provision among bidders?

Ms. Trundy said best practice is to leave the door open in designing the RFP about how the project has to be done. DAFS has to review all of those methods separately, in terms of individual capacity. It is not uncommon that they are comparing apples and oranges in provision of service.

Senator Tipping also asked about Juniper Ridge.

Ms. Trundy said that the state's need for landfills is not going away, and garbage production is increasing. They are looking at current landfill reaching capacity, liabilities after closure, safeguarding, operational considerations like that. This is a political, high-profile issue. All being held in balance.

Rep. Millett said the 2008 OPEGA report on procurement was taken seriously. He didn't see an action item on today's agenda to consider whether it is time for another OPEGA review. Representative Millett said the legislators have gone around the regular procurement process in some instances. There is a need for more follow-up information from DAFS. A listing of external procurement awards authorized by legislative special provision is needed. The Department has been responsive. Referencing Workday, Katahdin, liquor, Juniper Ridge, “by legislative fiat”. COVID money is being awarded right now through grantmaking. He thanked Deputy Commissioner Trundy and said the GOC could benefit from more information from DAFS on some things.

Rep. Fay said we have the resources of OPEGA, and can decide as a Committee whether to get their assistance on what a scope might look like. OPEGA can help the Committee figure out how to organize that into a report. She sees opportunities for change and improvement. She supports tasking OPEGA with taking everything heard today, Committee questions, and maybe coming up with a scope or plan, and what steps or form that might take.

Sen Hickman suggested a motion to task OPEGA with a preliminary step of dissecting the discussion, and coming up with a scope of work OPEGA thinks might be appropriate for the Committee to consider in another vote to be held in the future.

Representative Millett moved and Mastraccio seconded: OPEGA will develop a proposed scope of work regarding procurement and appropriate next steps to address the GOC’s questions on procurement, for Committee approval prior to adding it to the OPEGA work plan. There was approval of eight members, and Representative O’Neil also voted later in the affirmative, within the time limit permitted by Committee rules.

Maine Paper Manufacturing Facility Investment Credit

OPEGA Senior Analysts Jen Henderson and Kari Hojara joined the meeting to present the results of OPEGA’s evaluation of the Credit for Paper Manufacturing Facility Investment.

Jen Henderson introduced the presentation and said that the parameters of the evaluation that were set by the GOC based on the goals from the authorizing statute: provide incentives for revitalization of paper manufacturing facilities in counties with high unemployment, create or retain high-quality jobs in the state, and encourage paper manufacturers to modernize their equipment.

Kari Hojara presented some background information: the credit was enacted in 2021 and is jointly administered by the Department of Economic and Community Development (DECD) and Maine Revenue Services (MRS). It is a refundable credit of up to \$16 million over 10 years for a \$40 million qualifying investment. Claimants apply for a Certificate of Approval, then later a Certificate of Completion. The legislation does not specify a time limit for when a company must apply for a Certificate of Completion or claim the credit. Only one business, Twin Rivers Paper Company, can qualify for this credit. To qualify for the credit, an applicant must meet requirements related to employment, location, investment amount, and other incentives that cannot be co-used. She noted that other Maine paper manufacturers could be at a competitive disadvantage without access to this or a comparable tax credit.

Ms. Hojara explained the but-for, or how likely a credit is to have impacted investment and hiring, and how much of the resulting economic activity can be attributed to the credit. The framework OPEGA used suggests that the credit may have been influential in Twin Rivers’ investment, partly because of its magnitude (40% of the value of the investment).

Ms. Henderson said that Twin Rivers has reported roughly \$35 million in investment between 2019 and 2023 to modernize the mill in Madawaska. The company submitted \$23.7 million for a Certificate of Completion in June, and DECD authorized a credit of about \$9.5 million over 10 years. The additional \$11 million investment went to equipment that was purchased but not yet installed. If the company applies for an additional Certificate of Completion in the future for that \$11 million dollars and receives approval, the company would then be eligible for a total credit of about \$13.9 million dollars. Due to this continuing certification process, OPEGA recommends that some additional information on this be included in DECD reporting so that the state can monitor fiscal impacts.

Twin Rivers provided OPEGA with a breakdown of the categories that the \$35 million investment went to, such as productivity, infrastructure, and obsolescence and upgrade. 29% of the total investment went to Maine suppliers.

Rep. Mastraccio asked if OPEGA knows what the individual projects invested in were. Ms. Henderson said OPEGA did get a fairly detailed list and toured the facility.

Sen. Bennett asked OPEGA to define what was meant by “Maine suppliers.” Ms. Henderson said Twin Rivers reported the purchases from vendors with Maine locations.

Ms. Henderson said that OPEGA did an economic impact analysis using the IMPLAN model. The details and assumptions are in Appendix C of the report. The in-state qualified investment spending temporarily supported up to 71 jobs in the industries that provided services or goods to Twin Rivers (not jobs at Twin Rivers). The investment resulted in one-time tax revenue of up to \$430,000. The in-state qualified investment generated up to an additional \$6.4 million in GDP over and above normal mill operations. It’s impossible to know how much this credit influenced the company’s investments, so OPEGA provided a table showing a range of influence factor amounts, and the corresponding amounts of the estimated economic impact that would be attributed to the credit.

Sen. Tipping asked whether there is anything to prevent equipment from being uninstalled or sold. Ms. Henderson checked the statute, and later explained that there were no prohibitions against selling equipment. Causes for revocation of the credit are ceasing operations; the credit can’t be claimed if employment drops below 400, if workers’ income drops below a threshold, and if the headquarters are not in Maine in that year. Sen. Tipping said that he thinks this is a concern.

Ms. Henderson said that Twin Rivers reported 471 qualified employees at the mill in 2023; about 95% of them reside in Aroostook County. OPEGA estimated that Twin Rivers operations support 487 ongoing indirect jobs, separate from the mill. These supply chain jobs include everything from timber harvesting to law and accounting. The report’s map shows how the labor income is distributed throughout the state.

Ms. Hojara explained an analysis of Maine’s tax environment on industry competitiveness that OPEGA contracted from the company EY. The analysis compared Aroostook County’s effective tax rate (ETR) with five comparison counties. The paper manufacturing credit helped Maine’s ETR stay competitive with comparison states, for businesses that can access it.

Sen. Bennett asked how relevant the tax credit piece is compared to other factors in business competitiveness. Ms. Hajara said that from talking to industry members, OPEGA learned that tax burden is important, and cost of energy is also a big burden in Maine. Sen. Bennett asked if OPEGA went into the details of other ways the funds could be spent that could leverage competitiveness for the whole industry. Ms. Henderson said that OPEGA focused this project on the scope of work, which was the impact of this credit. Sen. Bennett said that the benefit is only to one business, not to the whole industry. It’s not providing a statewide benefit to the whole industry.

Ms. Hojara said that EY’s model is based on a business that can access the credit.

Sen. Bennett said that the chart as pulled into the PowerPoint is misleading in suggesting that the incentive benefited the entire industry in Maine.

Ms. Hojara showed a comparison of the value of paper manufacturing credit and the broader Dirigo incentive. Dirigo does not provide as much benefit in this analysis.

Rep. Mastraccio asked if there’s a cap on Dirigo like the cap on this incentive. Ms. Henderson said that OPEGA could bring details of the Dirigo credit to the work session, and said that the Dirigo example shows what a paper manufacturer that doesn’t qualify for this credit could get in tax incentive to show how that would compare to the Paper manufacturing credit.

Sen. Tipping asked whether OPEGA could look at broader investments in economic competitiveness instead of specific tax incentives. He gave examples of education and transportation investments for possible points of comparison. Ms. Henderson said OPEGA staff have looked into that and haven’t found a clear methodology that would allow clear comparisons but will continue to explore this.

Ms. Henderson explained the report’s recommendations:

For DECD:

- Recommendation 4: DECD should strengthen job quality confirmation reporting and provide additional compliance monitoring to assure that jobs have appropriate characteristics (like group health insurance).
- Recommendation 5: The credit’s final fiscal impact is unknown. DECD annual reports should include qualified investment that has received final certification.

She reported that DECD says that it intends to make these changes.

Sen. Bennett asked about whether the Revenue Forecasting Commission gets this information and takes it into account. Ms. Henderson said we could look into that for work session.

Recommendations for legislative consideration:

- Recommendation 2: There are challenges in bringing together data across incentives to get a full picture. Cross-incentive information isn’t available. OPEGA recommends that long term, additional systems or reporting are created to improve transparency on incentive use.
- Recommendation 3: Consider whether performance measure 4 needs clarification or there is a need to collect new data. (“Change in the number of paper manufacturers and machinery... and the number of modernization projects...”). OPEGA was unsure how to quantify this or use it in the evaluation.
- Recommendation 1: Consider other approaches to future single-entity incentives. Maine has a number of single-entity incentives. Standalone tax credits may not be the most effective or efficient way to do this. Some other states use discretionary grants or closing funds with varying levels of legislative involvement (see report Appendix D).

Ms. Henderson thanked DECD, MRS, Twin Rivers, and program stakeholders who provided perspectives.

OPEGA Proposal Regarding Next Three Tax Expenditure Reviews

OPEGA provided the committee with three proposals for tax expenditures scheduled for full evaluations: Railroad Track Materials Sales and Use Exemption, Refund of Sales Tax on Purchases of Parts and Supplies for Windjammers, and Telecommunications Service Providers Tax Exemption. OPEGA’s recommendation for these expenditures was that they do not receive a full review at this time. A Committee vote would be required to reclassify these three credits to a No Review evaluation category.

Ms. Hojara joined the Committee to answer questions about OPEGA’s proposals.

Sen. Tipping asked why OPEGA proposes not evaluating the Windjammers credit. Ms. Hojara said that this credit is a business incentive for a specific industry, but there isn’t a revenue loss estimate nor a good data source for this credit. She also explained that while there may be value to a review, that it was a matter of prioritizing the resources of the tax evaluation team but that the Committee could choose to do a review.

Rep. Mastraccio asked whether the Tax Committee could still review these incentives? And whether OPEGA was waiting to hear back from the Taxation Committee regarding the Telecommunications Service Providers Tax Exemption. Ms. Hojara said that OPEGA had not yet reached out to the Taxation Committee regarding that exemption, pending GOC action. Ms. Hojara stated that incentives in the No Review category would not receive regular review from any Committee. Rep. Mastraccio asked whether there are others like this, that won't be reviewed by anyone.

Ms. Hojara said there is a long list of credits like this. OPEGA does track their revenue loss estimates annually and can bring any dramatic changes to the Committee's attention. She said that the Committee could task OPEGA with chasing down information on exemption amounts from likely beneficiaries, if the Committee sought more information with which to make this decision.

Rep. Mastraccio said that sometimes when we propose to eliminate something, that's when we find out who is benefiting.

Sen. Tipping said it seems like a concern that we don't know how big the credit is or how to find the information, and the Committee should continue to consider that.

Rep. Fay said that the Committee discussed recently whether there would be an opportunity to revisit reviewing credits that are not scheduled for review. Going forward she would hope that the Committee can revisit this or tweak the process based on the resources we have.

Sen. Tipping suggested tagging credits that OPEGA thinks are “unreviewable” or don't have readily available information for review purposes.

Sen. Hickman asked whether, if the Committee doesn't take action today, OPEGA would be in the position of having to start one of these reviews. Ms. Hojara explained that it would not.

Rep. Mastraccio said that the next GOC will have a member of the Tax Committee, hopefully an experienced member, which should be helpful in making these decisions.

Ms. Hojara said that Recategorization is on the schedule for the next Committee meeting, and that will be an opportunity to see all the tax expenditures and the list of full evaluations.

Sen. Hickman suggested that maybe this issue should be held for the next meeting.

Rep. Mastraccio moved to table this decision. Rep. Millett seconded.

The Committee unanimously voted to put both this consideration and the full categorization discussion on the agenda for the October 16 meeting.

OPEGA Report Presentation - OCFS Case File Review: Safety Decisions and Actions Taken in the Case of Sylus Melvin

Sen Hickman called the meeting back to order at approximately 1:17 pm, and asked for a moment of silence for Sylus Melvin, Hailey Goding, Maddox Williams, and Jaden Harding.

Sen. Hickman then invited OPEGA Director Schleck to present the subject report, which may be found at the

following link: [11131 \(maine.gov\)](https://www.maine.gov/ocfs/11131)

Director Schleck did so, walking the Committee through the overall conclusions from pages 7 to 25 of the report. Some of the following questions were fielded by Director Schleck on a topical section by section basis.

Sen Keim in referring to the OPEGA recommendation below asked if the Katahdin system works in this respect. She noted the Committee has heard a lot of complaints that the Katahdin system was not working the way it was supposed to work.

Recommendation: The identified issue occurred in 2018, and, since that time, the Department has made policy changes and implemented a new child welfare information system, Katahdin—both of which appear to have addressed this issue. Current OCFS policy outlines that all critical case members are to be included in all reports, investigations, and cases, and added to the relationships screen in Katahdin. Within Katahdin, there are additional instructions explaining how caseworkers are to enter this information.

Director Schleck stated that OPEGA did not do an evaluation of the operational efficacy of Katahdin and deferred the question to the OCFS director.

Sen. Hickman asked what was the response from the person OPEGA was interviewing when this issue was discussed?

Director Schleck said there was frank acknowledgement that this should have happened differently.

Sen Hickman asked if this particular caseworker was “written up”.

Director Schleck responded that he is not aware of whether that has happened and deferred the question to the Director of OCFS. He further stated that she may have limited ability to discuss personnel matters in an open meeting.

Sen Hickman asked whether it was clear that the undocumented safety plan was never filed or was it lost?

Director Schleck said that he did not know.

Sen Duson asked a placeholder question for Director Johnson regarding the internal process for correcting and providing internal support to a caseworker when a particular practice issue is discovered by management or supervision.

Sen Timberlake asked how many different caseworkers were involved in this case.

Director Schleck stated that prior to the death of Sylus, there were two primary caseworkers. After the death of Sylus, there were subsequent proceedings regarding Sylus’ older full sibling in which Director Schleck understood that media statements where Ms. Newbert has shared that there were a number of caseworkers involved.

Sen Keim questioned what kind of “not caring” was meant regarding the statement:

“Days after the birth of Ms. Newbert and Mr. Melvin’s first child in 2018 (Sylus’ older full sibling), the hospital made a report to CPS that Ms. Newbert and Mr. Melvin were not providing care for their substance-exposed infant while Ms. Newbert and the child were still in the hospital.”

Sen Keim asked for an example of how the parents were not taking care of the infant in the hospital, as hospital staff is usually right there.

Director Schleck said that while he is not a hospital worker, his understanding was that there are times while a family is in the hospital, taking the child into their arms, feeding, and interacting. It may be in that realm where they weren't *attentive* to the child. Director Schleck said he can get more information regarding the level of the report's assertion of the lack of care for the infant by the parents.

Sen. Hickman asked how long Department call logs are available.

Director Schleck responded that OPEGA's recommendation is that for open cases involving a child fatality, that the Department seek to retain the call logs of appropriate land lines and cell phones. Regarding the specific question, Director Schleck said that he does not have greater insight, but wanted the Committee to know that OPEGA had tried to pursue this in the case at hand.

Sen. Hickman said he found the explanation odd: that the requested phone records were not available and “could be due to it being out-of-date, too far back in the past or just not available.”

Director Schleck referred the Committee to Appendix B of the report which includes a listing of the extensive records that OPEGA *did* obtain and thanked the Attorney General's Office for providing those records. These records included cell phone call logs from Ms. Newbert, Mr. Melvin, and the caseworker assigned to Sylus' investigation.

Rep. Fay stated that domestic violence is complicated and there is a lot of nuance and subtlety regarding the behavior of people involved in that dynamic. She felt that this needed to be said aloud.

Sen. Hickman agreed and said “there's no judgment here but this could possibly explain the different ways that Ms. Newbert's mother described her daughter's relationship to different people at different times.”

Sen Timberlake said, “I'm having a hard time. I was going to wait until the end, but I get on page 16 and we say ‘unknown to the caseworkers’. After all we've heard and all we've seen to get to here, how in the devil can we be in a place where this would be unknown to the caseworker that there was violent action and that abuse had taken place to this point. No part of these comments from page 16 to the bottom of 17 make any sense to me – [nothing] that justifies the caseworker not knowing. Either something didn't get put in the report, or no one could see it because caseworkers weren't entering it in. But somewhere here there is some fault because everything you've told me until we get to page 16 has shown abuse since 2018. And how can it not be in the report? How can they not know about it?”

Director Schleck said these transmissions of concerns are regarding during Sylus' life. The Department is focused on immediate threat of serious harm.

Sen Timberlake said, So the Department doesn't take into consideration what happened previous to the week that Sylus was born?

Director Schleck said, it does. OPEGA has said that the prior case file was considered by the Department. But there must be a current threat for child removal. Actions in the past are elements of risk to be managed, but not a legally actionable invention.

Sen Timberlake read from the report: “... Sylus' death indicates that there were safety threats within the home during that investigation that were unknown to the caseworker ...” “It says it right in the report. How can it be unknown to the caseworker?”

Director Schleck said that what the OPEGA report endeavors to lay out is that the caseworker for Sylus upon becoming involved, considered the history of the family and asked all of the key parties: Ms. Newbert, her mother, Mr. Melvin’s providers - and was not told of the things that now appear were going on during Sylus’ life. The only reason we have insight in this is due to the State Police investigation *after* Sylus’ death.

Sen. Timberlake said again that no part of this makes sense to him. He referred to what he said earlier about 6 different caseworkers on this case - information did not get relayed to somebody. Somewhere there is some fault here, because written in the OPEGA report is that it was unknown to the caseworker.

Sen. Hickman said that on page 15 of this report, the caseworker interviewed Ms. Newbert’s mother and father before Sylus was released from the hospital and both reported no issues at that time. “I do understand that Ms. Newbert told different parties, different stories at any given point in this tragedy and it seems as though after Sylus was murdered – apparently you are saying that her revisionist history about the call she made, you could not find evidence of.”

Director Schleck said OPEGA found evidence that she communicated these things *after* Sylus died.

Sen Hickman said, “but not in the same timeframe that she claims she did until after Sylus died.”

Director Schleck said “That is what all of the interviews with police, public health [nurse], caseworker. That’s what the phone records to the extent [we have them indicate].”

Sen Hickman said, this makes sense why the caseworker didn’t know. Because no one told the caseworker of any of this – these threats, the sense of harm, Mr. Melvin was threatening to kill people, the whole family.”

Director Schleck stated that he “would like to acknowledge where Sen Timberlake might be coming from [in his prior statements]. I don’t want to speak for Senator Timberlake, but I think where he is coming from is that all the history should have energized the caseworkers more, to intervene more, do more... There is risk because of domestic issues, drug use, mental health issues. Caseworkers are constantly reckoning with risk. The law is still about immediate threat of serious harm. I appreciate what Senator Timberlake is saying and I understand why he is saying it.”

Sen Hickman said, “I do too. And it also appears that Ms. Newbert’s mother (and I cannot read her mind) may have not wanted to tell the caseworker about these things for fear it would break the family apart.”

Director Schleck stated that he did not want to speak for Ms. Newbert and she is entitled to attend the public hearing [on October 16].

Rep. Mastraccio said she understand that this is “he said, she said” and then what we actually have proof of. And we do have proof that some of these things people have said didn’t happen.

Sen Hickman referred back to the top of page 21. “It’s my understanding that if any law enforcement officer at any level is told by anyone over the phone that someone had laid their hands on someone in the household, that they [LE] would come out immediately.” Have you seen that an officer would say “if Mr. Melvin puts his hands on you again or the children then she ought to call back and they would remove Mr. Melvin from the home” – how does that sound to you?”

Director Schleck said, “That is Ms. Newbert’s mother’s account [of the phone call]. So, if true, agreed [with Sen Hickman’s understanding that law enforcement would come out immediately].” “We have the conflict in accounts.”

Rep. Fay asked a general question, (not to Director Schleck) when do law enforcement officers who receive a call which infers domestic violence make referrals to the caller for domestic violence resources?

Director Schleck referred this to the OCFS Director who may have more information on this topic.

Sen. Hickman referred to page 24, “CPS Intake noted that Mr. Melvin had supervised visitation with Sylus’ older full sibling, but Ms. Newbert was not to be the supervisor due to the parents’ history of domestic violence and both parents having been substantiated in the past for the threat of physical abuse.” So, Ms. Newbert was not supposed to be the supervisor, is that what this means?

Director Schleck said that is what the intake worker thinks it means, but the problem is that the Parental Rights & Responsibilities Order does not say that.

Sen. Timberlake asked what the Director thinks could have or should have been done to prevent this death?

Director Schleck responded that the statutes and rules talk about immediate threat of serious harm, and that they have to show a judge the current events.

Sen. Timberlake said he “read the history of the father and of the case in the report and everything proves criminal problems, domestic abuse for years and years and years. And we say at the end of it we don’t have it. I think the Department of Health and Human Services has a job to do – protect the child. And I don’t think we [should] have a child that is born addicted to drugs from day one and our response is ‘we don’t know if we could have done anything different under the guidelines’. I call baloney.”

Rep. Millett asked the ages of Ms. Newbert and Mr. Melvin at the time they produced their first child? And were they engaged in anything marital or was this an occasional relationship which produced two children and the death of one.

Director Schleck stated that the couple were in their late 20s and early 30s. He also said that he was unaware of their marital status. We can get that information for the work session if we have it.

Rep. Arata expressed her frustration with the situation but said that she felt the purpose of the report was to determine if mistakes were made by the Office and it is the responsibility of the Legislature to take the information in the report and craft some legislation to keep this from happening again. She asked Director Schleck if she was correct in that assessment?

Director Schleck said that this was a fair assessment and referred to OPEGA’s recommendations and potential areas of improvement.

Sen. Hickman thanked Director Schleck and asked Director of OCFS Bobbi Johnson to speak.

Director Johnson read a prepared statement and then was available for questions.

Director Johnson went through answers to some of the questions previously presented by GOC Members in the prior section of the meeting:

She said Senator Keim had asked about Katahdin and whether it was working as intended regarding how the caseworkers are gathering information about critical case members. Director Johnson said there are two ways caseworkers are gathering the information and documenting in the system. One is called the “person record” and the other is in the actual case, and those are connected. There are also checks in the system to ensure that the information is entered. It is entered initially by child protective intake staff and then is

updated as needed by caseworkers as they determine other critical case members. That information is being captured and is available to staff for any subsequent involvements.

Sen. Keim said she has not worked with the system, so it is difficult to ask a pointed question regarding how well it works. But she said that the Committee has been told how it is described to work and staff have also said that how it works for them is different. Since the most recent time that workers have said that the system is not working well, that it has been difficult to enter and retrieve information, have there been changes?

Director Johnson said that updating the Katahdin system is a continuous process and they update it based on feedback from staff.

Director Johnson said that a previous question related to background checks on Ms. Newbert’s father and what was the process. She explained that it is a standard practice that we expect to check the background prior to placing a child in a home with kin, fictive kin, or resource parents. There is a process for approving these placements which involves the supervising and reviewing the steps taken. The Office now has a background check unit which does background checks on critical case members. As in this case, critical case members may not show up immediately and so there is a process where caseworkers can request background checks as needed. The Office now has the ability to receive federal background information that they did not have previously.

Sen. Duson asked if a caseworker makes a mistake, what internal process is there to highlight the issue and provide an opportunity to improve.

Director Johnson said, the Office has their supervision process. Supervisors are responsible for providing coaching and training, identifying barriers to making decisions that aligned with policy. There may be a systemic issue, an individual practice issue or there may be an issue common to a particular unit. The response is targeted to either system or individuals or groups as a result. There are also times when discipline is an appropriate step to take.

Director Johnson responded to Sen. Timberlake’s prior question regarding the number of caseworkers assigned to the cases. Two caseworkers were assigned. Following Sylus’ death there was an investigation caseworker, followed by a permanency caseworker which is standard practice if the case continues after the investigation is closed. She believes there were a couple of other transitions, but she does not know the reasons.

Director Johnson responded to Sen. Keim’s question regarding a parent’s level of responsibility to care for a newborn in the hospital. Director Johnson noted that page 26 in the report outlines the reasons for the report. The hospital has expectations for the level of care the parents should provide. They are assessing to see if there are gaps or needs to address before they take the infant home. Director Johnson felt that was part of what was happening with the report but also on page 26 it says “...a second report from the hospital indicated that neither parent was caring for the child as Ms. Newbert stated she was in too much pain after complications from the birth and Mr. Melvin stated that he had a brain injury and explosive anger and insisted it was not his job to care for the baby.” That is a small excerpt from the intake report regarding why the hospital thought the intake report was necessary.

Sen. Keim had follow up questions. The statements seemed significant and these two people seemed to have already been flagged as not capable of caring for a child, given their history. And Sylus was born drug-affected but she did not see anything here about a follow up by the Department for that reason. What is the policy given that the child was drug-affected and the mother’s previous history?

Director Johnson said that in the June 2018 report the Department did follow up on the substance exposed infant. In general, when the Office receives reports of substance-exposed infants, there are two pathways. One pathway is when there are no allegations of child abuse or neglect. In those situations, the Office refers families to public health nursing, and Maine Families home visiting for follow up. If there are allegations of suspected child abuse or neglect, the case would be assigned for investigation.

Sen Keim asked what pathway would you say this case followed?

Director Johnson said that in this case, because of the information reported to the Office in 2018, they opened an investigation.

Sen Keim asked, “after Sylus was born substance affected?”

Director Johnson said we opened that investigation.

Sen Hickman said that the report was that Sylus was exposed to prescribed buprenorphine.

Director Johnson stated that is a substance given to individuals with opioid disorder.

Sen Hickman said, so she was engaged in substance use disorder treatment and you still have to call the infant substance exposed. But the fact that the substance was prescribed does that mean that you open an investigation on a prescribed substance?

Director Johnson said they would not necessarily open an investigation unless the other criterion was met about whether there was suspected abuse or neglect. If there are no suspicions, we connect families in partnership with hospitals to home visiting, public health nursing. We follow up to ensure that’s done. If there are suspicions of abuse or neglect, we would open an investigation.

Sen Keim asked if we know if the substance Sylus was exposed to was only prescribed medication or were there illicit drugs as well?

Director Johnson replied that she does not have the answer to that off the top of her head.

Sen Hickman said that on page 43 it says that the hospital “noted six prenatal drug screens that were positive for Subutex only.”

Director Johnson said that is the treatment for opioid disorder.

Sen Hickman said “so, it doesn’t sound as if Sylus’ mother was taking illicit drugs.

Sen Keim asked about the situation where intake states that Ms. Newbert was not to be the supervisor of visits between Mr. Melvin and their older child and yet the Parental Rights and Responsibilities Order did not impose that restriction. What is the explanation for the Department’s confusion?

Director Johnson said that her assumption (while not speaking for those staff) is that when they were looking at prior history, they saw that the recommendation from the Department in the closing summary or the prior case was for Ms. Newbert to not be the supervisor. But they did not necessarily look at the court order, and that they may not have received it at the time of the call.

Sen. Hickman asked is there a way to obtain a more definitive answer?

Director Johnson said that she can get that information for the work session.

Sen. Bennett asked if the Office does an assessment in a case like this of a parent's ability to parent?

Director Johnson said yes, this would be part of the normal process in an investigation. A caseworker will have their own observations, talk with family members and collateral contacts of the family. This would communicate any concerns that those contacts might have about the ability of the parents to safely parent their children.

Sen. Bennett asked if you conclude there are parenting deficiencies, would the caseworker provide resources for the parent to improve parenting ability?

Director Johnson said yes.

Sen. Bennett asked if that was done in this particular case?

Director Johnson said she does not have the information regarding this specific case; however, some services provided offer some of that – like public health nursing, Maine Families home visiting is going in to assess and help them understand their child's development and particular needs. Other services were targeted to specific issues such as mental health concerns and substance used disorder concerns that would affect someone's parenting. If there was a specific parenting service outside of those, she said she doesn't currently have the answer.

Sen. Bennett said when there is a question of removal of a child from the home, there is some level of assertiveness regarding obtaining parenting skills as part of that. In a situation like this, at what point would those be invoked?

Director Johnson said that the Department has a Triple-P parenting program throughout the State with 5 different levels. They assess the parents' abilities and the interventions are targeted at the abilities and deficits of the parent. In the case of a child being brought into state custody, parenting skills are assessed and addressed through visitation.

Sen. Bennett asked if these people assessing and aiding parents are separate from the caseworker and is there communication between them?

Director Johnson said yes. They bring people together through the family team meeting process which include the families, their supports and the providers. In these meetings information is shared and any barriers or gaps in understanding are discussed.

Sen. Keim said that it seems that the father had a history of domestic violence, and the mother seems to have had a history of not being able to provide the proper oversight and care for her children. These issues did not seem to be brought forward to the next case with all the same players. It did not seem that the case was brought to that level of understanding that there was real danger here.

Director Johnson said this is one of those situations Director Schleck called attention to where reasonable people can have questions. She said caseworkers cannot respond to information that we don't know. The mother in the prior cases demonstrated protective capacity. She was connected to a domestic violence resource center. She had obtained a protection from abuse order and enforced it 3 times in order to protect herself and her child. When they closed the case, the Department had this information as well as information from providers that she was engaged, providing safety for her child. When they were involved in the case when Sulus died, they were in the investigation work. The Department currently has 45 days to complete an investigation. They opened the case and the caseworker did all of the steps expected in order to assess the

safety of the child. The information available to the caseworker is different than the information we have today. That is a challenge to the staff. It is a challenge in the way that they can partner with families in order to gather information to protect the child. It’s a challenge to the staff regarding how to get information from service providers. This caseworker talked to multiple providers who all provided positive reports on the family. The caseworker talked with the extended family and law enforcement. They still didn’t have the information they needed to make the most informed decision. And that is a barrier for child protective services.

Sen Keim. said to clarify, you are saying that once the first case is closed and the next case is opened, the first case isn’t forgotten. It is taken into consideration, and it is part of the flagging system. That is protocol.

Director Johnson said yes and expanded on the work that a caseworker does regarding this prior to going to the field for their first interview. Even knowing the history of the family, in order to go to a judge, we must have immediate risk of serious harm, and in this case, we had no evidence of that.

Sen. Timberlake said that the Office of Child and Family Services is there to protect children, right?

Director Johnson said “Absolutely.”

Sen Timberlake said, “There was an obvious failure here because the child was not protected. So if you had a chance to look back at this case and you had a chance to do this case over, what would you do different this time around that didn’t happen here?”

Director Johnson said the cases the Department is involved in are complex. She said anytime there is a tragedy, it weighs heavily on her staff, and they are thinking exactly what you just asked, Sen Timberlake - What could I have done differently? She said that they feel a huge responsibility because they are charged with keeping children safe. Thinking back over the case, the caseworker did everything we could have asked her to do. But “were there different ways that we could have engaged with this mom or the grandmother to help her share that information with us?”

Sen. Timberlake said as he looks back at it, he asks how he could help as a legislator and a citizen. “But I look back at the history of this family and maybe we as a Legislature should give you more control because to me, if a child is born addicted to drugs, as a parent you failed, and you should not go home with that child until you’ve proved that for a period of time that you’re clean. At that point in time, in my opinion, the child should have been taken away and put in a safe place. All of these cases reviewed involved a child born addicted to drugs.” He said that domestic violence is a big problem and children shouldn’t be around it. He continued that maybe the Legislature should pass something that if a child is born addicted to drugs, the child should be taken away until the parent is clean.

Director Johnson said that she also thinks substance use disorder is complex and we have a lot of individuals in our state that have struggled with opioid and other types of addiction. When a child is born substance exposed (we use the term “exposed” rather than “addicted” because there are other behaviors that are associated with addiction) it is sometimes better for the child that they are exposed to the substance rather than being born of a mother with withdrawal symptoms from the substance she is using to treat her substance use disorder. So, she said she respectfully disagrees that every child who is born substance exposed should also be taken into state custody. She said she wholeheartedly agrees that cases and families such as Syllus Melvin’s reflect opportunities for the collective system to help improve ways to protect children in our communities. She thanked the Senator for his offer to help. She said the Department is going through 204 recommendations from this Committee, the child welfare ombudsman, and the citizen review panels. These recommendations will not sit on the shelf.

Sen. Timberlake said that he believes when a child is substance exposed something more should be done. He said he took exception that the child was born substance exposed and the caseworker said she was going off on vacation for a week and turning it over to someone else and wasn't following up for a week. Should we have closer follow up?

Sen. Hickman read from page 57:

There is no documentation of a call or other contact from Ms. Newbert or any member of her family after August 20, 2021. During her interview with the Department after Sylus' death on August 29, Ms. Newbert did not mention a request for a home visit, nor did she report that she had attempted to contact the Department with no response. After Sylus' death, Ms. Newbert shared new information with the caseworker indicating that Mr. Melvin had threatened to “kill them all” prior to Sylus' discharge from the hospital and that he had assaulted her after the last phone call with the caseworker (on August 20). She had not disclosed this information to the caseworker prior to Sylus' death. This contributed to the court-approved petition for the older sibling to enter state custody following Sylus' death.

Sen. Hickman asked, if the caseworker had gotten Ms. Newbert to relate that on August 20th, what would have been the protocol?

Director Johnson said that the Department would likely have filed a petition to remove the children at a minimum from dad's custody and probably from mom's unless she was able to demonstrate protective capacities. Subsequent to getting that information (after Sylus died) the Department did do that for the sibling.

Rep Arata said that according to the report on page 45, the structured decision-making tool said that the father's possession of heroin was not a problem. Is it typical that use of heroin 4 months before the baby is born isn't a problem? Some have come before this Committee and said that you can use drugs and be a good parent. I find that surprising. How much time do you get to change? What does the science say? Substance use is a pattern we are seeing in all of these cases.

Director Johnson said when the staff used the Structured Decision-making tool, they had likely other sources of information such as the substance use disorder counselors or treatment providers. The information they had was that Mr. Melvin had engaged in treatment for his substance use disorder. The fact that he dropped the heroin combined with the more recent information would be what informed that decision.

Director Johnson said that they have recently worked with the Clinical Opioid Team and have developed new screening tools for staff working with families, as well as a risk assessment matrix—Are they engaged in treatment? What type of substances?—to help staff do a better analysis of the level of risk that use or prior use of substances may pose to a child related to their safety.

Sen Hickman referred to page 45 of the report:

The caseworker recorded speaking with Ms. Newbert's mother who stated things were going well with the couple. She mentioned that she felt Mr. Melvin had grown up and Ms. Newbert and Mr. Melvin had been getting along with no problems. Regarding domestic violence, she reported that there had been little in the way of disagreements, but, if there is a disagreement, she encourages Ms. Newbert and Mr. Melvin to separate. Ms. Newbert's mother stated that she was not concerned about Mr. Melvin's substance use because he was in a program. She also said that she comes to visit almost every day and she expects to help with the children. The caseworker completed a safe sleep assessment and noted that the home was clean, safe, and appropriate. The older child's room was organized and full of toys.

Senator Hickman said, after Sylus’ death, Ms. Newbert’s mother reported a situation that was not as rosy as this picture is. Have you seen this before in your work especially when domestic violence is involved?

Director Johnson said she has seen this in her work. She has seen times when families are fearful that the Department is going to remove their children and so they don’t share the information that can help us to keep their child safe.

Sen Hickman asked, do you believe that’s what happened here?

Director Johnson said “I can.”

Sen Keim referred to page 16: “The caseworker contacted Ms. Newbert to inform her that they would be on vacation the following week and wanted to make sure Ms. Newbert and her family were all set.” And the caseworker gave her someone else to contact. Is that standard practice?

Director Johnson said that this caseworker went above and beyond what she would traditionally see. She explained that during the 45-day investigation period, they are not always having weekly contact with a family. For the caseworker to make the family aware of another pathway of support demonstrates quality casework practice.

Sen. Keim said that was her thought as well when she read this and wanted to draw attention to some of the positives about the case.

Director’s Report

Director Schleck noted the next meeting date (October 16, 2024).

The Director also advised that correspondence had been received from Reps. LaRochelle and Bridgeo, requesting that the GOC direct OPEGA to review staff safety at Riverview Psychiatric Hospital. **A motion was made by Representative Arata and seconded by Senator Keim, and the Members voting at the meeting voted 5-3 to have this discussed at the November rather than October GOC meeting. Senators Tipping and Duson, and Representative O’Neil, later voted in the time permitted, in the negative, and thus the final vote was 6-5 against the motion.**

Next GOC Meeting Date and Planning

The next GOC Meeting was scheduled for October 16, 2024.

Adjourn

Sen. Hickman adjourned the Government Oversight Committee meeting at approximately 4:13 pm on motion, and the vote was unanimous in favor of adjournment.