



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

MEMBERS:

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

**MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE**

**MEETING SUMMARY  
August 20, 2018  
Accepted September 27, 2018**

**CALL TO ORDER**

The Chair, Sen. Katz, called the Government Oversight Committee meeting to order at 9:12 a.m. in the Burton Cross Building.

**ATTENDANCE**

Senators: Sen. Katz, Sen. Libby, Sen. Davis, Sen. Diamond, Sen. Gratwick, and Sen. Saviello

Representatives: Rep. Mastraccio, Rep. Pierce, Rep. DeChant, Rep. Rykerson and Rep. Sutton  
Absent: Rep. Harrington

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

Executive Branch Officers and Staff Providing Information to the Committee: Governor Paul LePage  
Bethany Hamm, Acting Commissioner, Department of Health and Human Services

**INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS**

The members of the Government Oversight Committee introduced themselves.

Sen. Katz offered remarks on the loss of a member of the State House Press Corps. He said all in the State House knew Chris Cousins, who was a model for being a conscientious and ethical reporter who was always fair. When he made a mistake, he was willing to correct it and was the most collegial person in this arena. The Committee held a moment of silence for a great reporter who was even a better person.

## **SUMMARIES OF THE JULY 26 AND AUGUST 9, 2018 GOC MEETINGS**

The Government Oversight Committee accepted the July 26, 2018 Meeting Summary after the correction to change that Rep. Rykerson was not in attendance and accepted the August 9, 2018 Meeting Summary as written.

### **NEW BUSINESS**

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

Sen. Katz noted that Governor LePage was in attendance and wanted to comment on OPEGA's report after its presentation.

Director Ashcroft thanked OPEGA staff and with a special thanks to Eric Stout, IT Consultant in the Information Technology Office, the Governor and his staff and management, staff at the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry, and to the private citizens that OPEGA spoke with.

Director Ashcroft summarized the Information Brief on Sales of Timber Harvested From Public Lands. (The Information Brief can be found at <http://legislature.maine.gov/doc/2393>.)

Sen. Saviello asked if OPEGA had documentation that Stratton Lumber (Stratton) requested the extra wood or paid the extra money for the wood to come to them. OPEGA has an email in November 2017 from the Western Region Regional Manager of the Bureau of Parks and Lands (BPL) to the wood buyer at Moose River Lumber (MRL) and Pleasant River Lumber (PRL) saying Stratton had contacted BPL wanting to buy more wood and offering a higher price. According to the email, the Western Regional Manager discussed it with Director Denico, who said BPL should help them.

Sen. Saviello said the key is that they offered a higher price and he asked if there is an email that says that. Director Ashcroft said there is an email in November 2017 indicating that Stratton was seeking additional wood from BPL and offering a higher price.

Sen. Gratwick asked if OPEGA has any indication that Stratton offered higher prices in February 2018 and do they keep records of their inventory. Director Ashcroft said she is sure Stratton does keep records, but OPEGA did not seek that documentation. OPEGA was determining the facts around why the Director made the decision to send lumber to Stratton. It is OPEGA's understanding that Stratton was buying the diverted wood at the same price. As far as OPEGA knows, there was not a higher price involved in the February, 2018 diversion. Director Ashcroft said she is sure the details Sen. Gratwick asked about exist, but were not germane, or necessary, to get to the answer OPEGA was reviewing. Sen. Gratwick asked if there was evidence that Stratton actually paid more. Director Ashcroft said she wasn't sure OPEGA even asked that question.

Sen. Saviello asked if OPEGA had the opportunity to interview Nicolas Fontaine and, if so, did he say he requested the additional wood in February. Ms. Ricci said she spoke to Mr. Fontaine and his wood buyer and it is as OPEGA described in the report, they did not describe a specific request around the February time, but in January/February asked all land owners for more volume. Sen. Saviello said he has Mr. Fontaine's quote that he did not request the wood. During the Agriculture, Conservation and Forestry (ACF) Committee's hearing on this matter the Committee was told there was a fire in the woods that created the shortage. He asked if that came up at all during the review. Ms. Ricci said it did. It was relayed to her that when he spoke to the reporter he did not have his wood buyer with him at the time who deals with the day-to-day operations. Director Ashcroft said OPEGA did hear about the fire in the woods and the Director of the Maine Forest Service did confirm that

although there was an equipment fire it was not relevant to the decision to divert wood to Stratton and was not part of his reason for diverting the wood.

Sen. Katz said it was a fire that occurred after the wood was diverted and the equipment was not owned by Stratton, it was owned by somebody else. Director Ashcroft agreed. Sen. Katz said it appears that Stratton needed wood, but wanted to understand how was that communicated to Director Denico. The Director decided to divert wood, but there was not a specific request made by Stratton to the State to have the wood diverted, so how did lack of inventory get communicated to the State? Director Ashcroft said that is a piece that OPEGA does not understand well. Unlike the November situation, they don't have any documentation around that and can't state with any certainty on what information Director Denico's decision was based, who provided it to him, or the extent to which the Director considered impacts to other affected parties and/or State revenues. It remains unclear to OPEGA whether the situation was so critical that Stratton would have closed if Public Lands' wood had not been diverted. Director Ashcroft said OPEGA can tell the GOC what the Director told them was the basis for his decision.

Sen. Katz asked what Director Denico told OPEGA about the information he had regarding Stratton's shortage and how he had learned that. Director Ashcroft said Director Denico had a general understanding that Stratton was seeking wood from all land buyers. He understood from his Regional Manager for the Western Region that Stratton was critically low and had opened a log yard in the Eastern Region. She said almost everything Director Denico shared with OPEGA seemed to be anecdotal information.

Sen. Saviello referred to the questions the ACF Committee sent to the Governor that they wanted answers to and asked if OPEGA had a copy of that letter and is it available to the GOC. Director Ashcroft said OPEGA would have taken the documents prepared as confidential working papers so she would direct Sen. Saviello back to the agency to obtain copies.

Sen. Katz noted that it was said that at the time the wood was diverted away from PRL, wood which had been destined for HC Haynes was also diverted. One of HC Haynes' contracts was for buying stumpage, but they were also buying wood under a CLS contract. He asked if the Director knew how much wood actually got diverted to Stratton. Director Ashcroft said OPEGA did not get into the details regarding volumes of wood.

Sen. Saviello said there was a handshake agreement that a certain amount of wood would be sent to a facility. There may have been a request that if that was not going to be fulfilled, or if they did not need the wood, it would go back to the original contractor. In this case, the Brochus were guaranteed so much lumber and that wood was moved to Stratton. He asked if there was an opportunity for the Brochus to get the wood back. Director Ashcroft wanted to be clear that there is no contract around the sale of wood, there is no guarantee to any of the wood buyers as OPEGA understands it. There are negotiations about how much any mill wants to buy and what type of wood, but there might be changes to that plan for many different reasons as the harvest season progresses. She said in February there is a point at which the Brochus contacted the BPL asking to get the volume back that had been diverted. They did that in an email to Director Denico saying they were becoming very concerned about running out of wood and did not have sufficient inventories. In a subsequent email exchange that occurred, Director Denico stated that timber from Telos, in the Northern Region, was offered to the Brochus a couple of times. Telos timber was being sold to Canadian mills so if MRL/PRL were going to match the price paid by the Canadian mills, it would have been higher-priced wood. Director Denico referred to that in the email exchange saying that the operations at Telos had finished, but that wood could have been previously purchased by MRL and PRL. In the email exchange, the mill owners again asked whether the volume from the operations near Bangor and Seboomook that had previously gone to them, could be returned to them. But on February 28<sup>th</sup> Director Denico responded that BPL was planning to continue assisting Stratton as long as the trucking and production could continue. They were nearing mud season and posted roads. (See page 7 of the Information Brief.)

Rep. Pierce asked if there was any indication that PRL/MRL was critically low of wood or were they just trying to buy volume to increase their stock. He said from OPEGA's report it looks like Stratton was the only one mentioned as having a wood shortage. Director Ashcroft said OPEGA got no indication that Stratton was telling

anybody that they were so low on wood or that they would be laying people off. OPEGA was left being unsure exactly what the criticality of the situation was based on the information OPEGA was able to gather. Stratton explained that they were always seeking more wood from all land owners. Director Ashcroft said that is what OPEGA understood about Stratton's situation at the time. The other thing OPEGA points out in the report is that it does not appear that anybody in BPL had any information about what MRL and PRL's inventory situation was at the time of the diversion.

Rep. Pierce asked that if in OPEGA's conversations with PRL/ MRL, they said they were short of wood. Ms. Ricci said from the discussions she had, it was her impression that all of the mills at that time of year are generally having some degree of anxiety about their wood volumes.

Rep. Mastraccio was interested in the reasons and the way dispersing of lumber from Public Lands was changed. She looked at the goal for maximizing revenues from timber sales, supporting Maine mills, related employment and protecting the ability to sell harvested wood under all marketed conditions. She noted that the diversion of wood to Stratton actually resulted in a loss to the State. Director Ashcroft said on the maximizing revenue side, based on BPL's own assessment, it did result in a loss to the State.

Rep. Mastraccio asked if the other lumber companies were affiliated with Canadian lumber companies or is it just Stratton. Ms. Ricci thinks there is a lot of variety and complexity to the ownership of different mills. Rep. Mastraccio said the fact is that diverting the wood to Stratton actually cost Maine money and asked if there was any data that looked at past transactions of where lumber was diverted. Director Ashcroft said OPEGA was trying to get to the point in the review where they could answer, for the GOC, the basis for the decision to divert, whether or not the Governor was involved and whether it had anything to do with tariffs. OPEGA did not go back to review what had happened historically. When they found there was not a lot of documentation to work with, it became clear that even if they went back, OPEGA would still not know what the real reason was that Director Denico decided to divert lumber in this situation. OPEGA decided not to spend the time going back to an historical pattern only to be able to say here is what history told us, but we still cannot tell you why the Director did what he did. There were a couple of things about the February, 2018 diversion that differed from the situation in November of 2017. One is the fact there is no known specific communication from Stratton to BPL other than wanting more volume in general. In November, BPL's manager reached out to the wood buyer at MRL/PRL sending an email saying what the situation was and what they were going to do about it. They discussed it so the Brochu mills had awareness of it. Everybody agrees that communication did not occur in the February, 2018 decision. Director Ashcroft said if OPEGA could not bring the GOC an answer about the reason for the decision that was solid, that it did not seem to make sense to try to do a lot to determine how this situation compared beyond the November, 2017 situation.

Sen. Gratwick asked about BPL's orders: Are they there to preserve the resource or to sell the resource and get as much money as they can for the State? He asked whether there is anything written for the structure of the way the Department works. Director Ashcroft said BPL is responsible for managing the forests. She said the harvesting and selling of timber is a by-product of managing the forests. So wood is cut and then needs to be sold to get revenue as part of the larger forest management practice. As laid out in the report, BPL described to OPEGA that their overall goal is to maximize value to the State. They described the value as both the money received from the timber and the idea to keep Maine mills operating and Maine people employed. Another is ensuring continuing access to markets for wood. She said OPEGA noted in their report that the Department might want to have a more formalized decision-making process around the sale of wood and how they are making the decision that balance all of those factors.

Sen. Davis referred to Rep. Pierce's question about whether the owners of the MRL/ PRL had contacted Director Denico and informed him that they were becoming concerned about low volume and the amount of wood they had. He said it appears that on February 26<sup>th</sup> they in fact did that. They were told at that time, according to what is in OPEGA's report, that they did not purchase the Telos wood, and they could have. The owner asked again about the volume of operations in Bangor and Seboomook that had previously gone to MRL/PRL, if they could have it back. Two days later they were told "no". He said the Department apparently was going to continue assisting Stratton. Director Ashcroft agreed.

Sen. Diamond asked if OPEGA found any significant diversion from standard operating procedure in this instance. Director Ashcroft said what OPEGA saw was that there wasn't a standard operating procedure. There is a lot of flux and informality in the industry. Sen. Diamond said that is the standard operating procedure then, The Director said OPEGA did not see anything unusual in that there had always been informality in the process. The only thing OPEGA was able to point out was the way the February situation differed from the November one, in terms of the communications that went on between BPL and the various mills' wood buyers. She said November was only the second time it was described that there was a shifting of timer due to low inventories. There is shifting because mills request changes for various reasons, but as far as trying to assist a mill with a low inventory situation, there were only the three instances mentioned to OPEGA as described in the report.

Sen. Katz asked if there was anything unusual about the situation Stratton was facing in February as opposed to January or December. Was there some critical change, or huge dip, as compared to other times? Director Ashcroft said OPEGA tried to compare it to the November situation because that is one in which everybody agreed they had a low inventory situation and were going to divert some wood to Stratton. OPEGA asked about the inventory levels at Stratton in October and November and then asked about the inventory levels in January and February, 2018. In January and February they were proportionately lower on inventory than they were in November, 2017 and it was a point in the season where things could potentially dry up in terms of wood that would be available to be delivered to the mills quickly with the posted roads and mud season. There is a genuine anxiety at that time of year because people don't know how long that cut off is going to last so are looking to have inventories that will get them through that period in time. Sen. Katz said if Stratton's situation was as bad, or worse, in February did anybody sort out why it is that in November Stratton was affirmatively asking for more wood and in February apparently they were not specifically asking for more wood. That seems to be a disconnect and asked if OPEGA knew why that was. OPEGA did not have information to provide that answer.

Rep. Pierce noted the recent weather disasters, for example in Texas, and said there was a high demand for lumber and it may have been that Stratton had requests for lumber and the other mills did not.

Rep. Mastraccio said it did not seem to her, from OPEGA's Report and from the questions being asked, that there really is any difference between any of the lumber companies in question. There is no documentation that says Stratton had a shortage and that they wanted the lumber in lieu of giving it to PRL or any of the other lumber mills. OPEGA did not hear what Rep. Pierce described as something that factored into the Director's decision to divert the wood.

Sen. Katz explained that the Committee was at the point in the proceedings where they would ask the agency involved in the review if they wanted to make a statement and/or respond to any questions. He said Director Denico was not available for this meeting, but will be available on September 27<sup>th</sup>. Sen. Katz said Governor LePage was at the meeting and wanted to address the Committee.

Governor LePage thanked Director Ashcroft. He said the reason he requested that the GOC undertake the review of the Sales of Timber Harvested from Public Lands review is because of the fabrication of information that came out of the ACF Committee. He said if they insisted that OPEGA do the investigation that the Administration would get a fair shake. The Governor said that unequivocally, he had no idea of the diversion and was not involved in the diversion. He said that information came from Sen. Saviello. Whether he fabricated it or it was fabricated by the owners of PRL/MRL, the Governor did not know. He said he was a person who did not need to go behind people's back, he says what he believes and moves forward. The tariffs in this country are totally irrelevant to what this timber diversion was all about. The State of Maine, New Brunswick and Southern Quebec have been exempt for forty years and it was not until a year ago that the exemption was lifted. The impact of the three markets produced about two percent of the lumber going to market and that is why they have had an exemption over the years and have such a unique relationship between the two Provinces and the State of Maine.

Governor LePage said if you look at Twin Rivers Paper Company, the mill that makes the paper is in the U.S., the pulp mill is in Canada. If you look at Southern Quebec there are twelve mills, four of which are owned by

Mainers. The situation is similar in New Brunswick where people in New Brunswick own land and facilities in the U.S. and vice-versa.

Governor LePage explained the annual cut is based on the annual growth of the forest. You try to cut the annual growth so you have a healthy forest. The primary goal is to have a healthy forest. The second goal is to make sure that all the mills in Maine get the resources they need to operate. Third, you should want to try to maximize your revenues. Maine cannot harvest the annual cut and process it in the State of Maine. Maine does not have the infrastructure and that is why we need New Brunswick and Quebec in order to successfully harvest. This year with the tariffs, the Maine mills, the Maine owners that own mills in Canada, would buy our wood because you pay U.S. dollars and then you have a twenty-seven percent tariff put on when it comes back and there is no market. They have to develop new markets, which they have. They have gone to the Middle-East and Europe so has developed new markets so that resource is lost. The Governor agreed with Rep. Pierce that there is an enormous shortage of lumber and up until two weeks ago, lumber prices were at an historical high price, but has collapsed over the last couple of weeks.

Governor LePage said there is an imbalance in softwood coming out of Canada. That has been said for years and he agreed with the Brochus that there is an imbalance, but said the imbalance is on the West Coast, not the East Coast. He said that by having the tariffs, they have raised prices in New England significantly higher than where they have historically been.

Governor LePage said he finds the claim that he diverted wood and that someone would accuse him of doing that kind of business to be repugnant. He said that is not his style. He said he loves the wood industry and the minute you start playing one mill against the other and you shut down their wood supply, they are in trouble. Everybody has anxiety in February because you don't know if you are going to have snowstorms, an early melt, roads posted, etc. It is a very tenuous industry and you can formalize it and kill it or you can trust people who know the industry. The Governor said twenty-five years of his career has been in sawmilling.

The Governor said he did not know how Director Denico made his decision to send wood to Stratton, but understands he has regional people he talks to. He agreed there should have been more documentation, but said he would never divert lumber and finds it irresponsible for the ACF Committee to suggest he did. The Governor firmly believes that Committee owed him an apology.

Sen. Saviello said that he dealt with the facts that were before the ACF Committee and the facts the Governor just stated about the tariffs. He read what he said during the ACF Committee hearing, "We have not accused anyone of breaking the law. We just want the information so we can make better decisions on whether we need to reform legislation or not."

Sen. Saviello said during the Governor's presentation to the ACF Committee, he said he had answered their questions and that there were 150 pages of documents. Sen. Saviello asked if the Governor would make that information available to the GOC. The Governor said he would through FOAA request.

Sen. Saviello wanted to understand why the Governor thought there was a fire that occurred and is what had an impact it had on the diversion, because that was very important in the Governor's conversation before the ACF Committee. Governor LePage said that was his mistake. When he heard about the fire he made an assumption that maybe that had an impact and is probably why the wood was diverted. The Governor said that was his error.

Governor LePage said there was wood offered to replace the wood that came off Public Lands and the Brochus shut down the conversation. He said they didn't ask about the pricing, they didn't ask about anything, they simply said, that wood is too expensive.

Sen. Saviello clarified if the Governor indicted the Brochus never asked about the pricing. The Governor said that was correct. Sen. Saviello believed the information presented at the ACF Committee hearing is contrary to the Governor's statement. So, Sen. Saviello hoped Director Denico will be prepared to answer that question at

the meeting on September 27<sup>th</sup>. Governor LePage said he heard that last week during the meeting with OPEGA staff regarding their report. Director Denico did say he had a conversation and offered the wood. The Brochus said it was too expensive and shut it down. Governor LePage said at that point, if I am a buyer, I would be asking the price of the wood. Sen. Saviello said the Governor was saying the Brochus did not ask the price of the wood. Sen. Saviello also noted the \$50 per ton they were told it would cost them is a lot more money to get that wood to their mill.

Sen. Saviello said one of the other things the Governor suggested when he was before the ACF Committee is that he would have contracts developed so that everybody will have to abide by what they agreed to in the contract. There would be no more handshakes and asked where the State was on that process. Governor LePage said the industry is totally saying don't go there that it will cripple them. So, he has let it go. He will let the Legislature move forward on contracts.

Sen. Katz said on the reason for the diversion of wood, he wanted to read what the Governor had said before the ACF Committee (which the Governor acknowledged was a mistake on his part), and asked him how he came to that conclusion. Sen. Katz said what the Governor said "The reason the wood was diverted to Stratton Lumber is Stratton Lumber's inventory had gotten dangerously low because they had a fire in one of their feller bunchers and they lost a lot of volume and couldn't keep up and was going into winter months. We had a thaw and they were dangerously low so we diverted some wood." Governor LePage said that was an assumption he made because he was told there was fire and having been in the woods, rightly or wrongly, if he lost a feller buncher, which is a significant volume of wood that was earmarked to him. If that was gone, he would be out of wood. Sen. Katz said he believes it has been learned that the fire happened after and it wasn't even Stratton's equipment. Governor LePage said it was a contractor's equipment. Governor LePage said his only issue today is to say and tell the GOC that he did not divert any wood, he never would have, and it is repulsive. He said this is every bit as much as what happened with the Eves deal. He said he has been accused of things, allegations have been made and never have they been able to be proven.

Sen. Katz said as far as anything he has seen, no one has accused the Governor of doing anything. The Governor said "bull, this man over here is the most repugnant human being he has ever seen in his life".

Sen. Katz said "respectfully Governor, you are out of order and this matter is concluded. He thanked the Governor for being at the meeting."

Governor LePage left the GOC meeting.

Sen. Saviello said he would not tolerate being bullied and that what the Governor said was unacceptable and unnecessary.

Sen. Davis, Senate Chair of the ACF Committee, said that Committee will not be apologizing and would suggest that if an apology is needed, it should come from the Governor's Office to the Committee.

Sen. Gratwick found the situation very distressing and thinks the GOC should take a stand that the Governor's actions were entirely inappropriate for anybody. He would look to the Chairs for what an appropriate action to take would be.

## **RECESS**

The Chair, Sen. Katz, recessed the GOC meeting at 10:25 a.m.

## **RECONVENED**

The Chair, Sen. Katz, reconvened the meeting at 10:50 a.m.

Sen. Katz said what was seen and heard earlier in the meeting is “exhibit A” about what is wrong with politics today. The kind of personal attack made by the Governor on a member of the Committee was totally uncalled for and, in his view, unworthy of the Chief Executive of the State of Maine. What we need in our politics is civil and respectful discourse. This was the polar opposite that cannot be allowed to stand. Sen. Katz said unless there is objection, the GOC Chairs are going to write a letter to the Governor expressing their condemnation of his remarks and suggest that he owes an apology to this Committee and to Sen. Saviello, in particular. He asked if there was any objection. Hearing none, he said the Chairs will send a letter to the Governor.

Director Ashcroft said there was information in the Information Brief that was relevant to the discussion about whether the price the Brochus might have offered, or not offered, for the Telos wood and wanted to make sure the Committee members were aware of that. She referred them to page 5 of the Brief in the Timeline of Relevant Events, November 20, 2017 the Northern Region Forester did contact the wood buyer for MRL and PRL to ask if they wished to submit a bid on the wood harvested from Telos, which is in the Northern Region. According to BPL they never received any bids or responses on that request. On December 6<sup>th</sup> the Northern Region Forester again emailed that buyer to ask if they were interested in the Telos harvest, but OPEGA does not have any further information about anything that happened as a result. She said the situation the Governor was referring to in his remarks is in the January 29<sup>th</sup> to February 1<sup>st</sup> bullet and OPEGA had different accounts of what date the meeting actually took place, but it is a time at which Director Denico stopped in to see the owners and wood buyer at PRL. As part of that meeting, the Director was explaining to the Brochus that he had just been up to Telos and they had some very good logs being harvested and that the owners asked the wood buyer why they weren't getting that wood and the buyer said it was because it was too expensive. OPEGA's information is that Director Denico went on to say that there was no further discussion at that time about the price. Director Ashcroft said that is what the Governor was referring to when he said the Director said that they then did not explore any further what the price might be. OPEGA does understand that it is the policy of BPL to allow a Maine mill to match a bid that has been given by a Canadian mill so perhaps, at some point, it was communicated that what the Canadian bid price had been on that wood and is why the Brochus thought it was expensive.

Rep. Mastraccio said the discussion they were having at the end of January and beginning of February was about the wood that was sold in the past. Director Ashcroft said they were still harvesting. Rep. Mastraccio said that was prior to the diversion of the wood. Director Ashcroft said that was correct and the Brochus and the wood buyer don't recall specifically discussing the Telos wood at the January/ February meeting. Rep. Mastraccio asked if they discussed it in reference to the wood being diverted or that they were not going to get the other wood. Director Ashcroft said no, that the decision to divert was made later. The discussion about if they wanted the wood so Director Denico read that to mean PRL/MRL's inventories were fine because they were not looking to try to buy the wood from Telos.

Sen. Saviello believes that during the public comment period on this report, the Committee will hear that the wood from Telos would have cost a lot more money and the Governor thinks it is okay for the Brochus to spend a lot more money, but it cost the State \$18,000.

Director Ashcroft said the GOC is scheduled to hold a public comment period on OPEGA's report of the Sales of Timber Harvested from Public Lands at their meeting on September 27 and then potentially have a work session. OPEGA needs to know if there is anyone in particular the GOC would want to invite to come to the work session and if there is any other additional information that OPEGA might already have that they might like to have. OPEGA will see if they have that information or if it is something they would be able to get within the limited scope of the review.

Sen. Saviello would like to invited to the September 27<sup>th</sup> GOC meeting Nicolas Fontaine, Stratton Lumber; Doug Reed, Chuck Simpson, Peter Smith, State Foresters who have some responsibility for the woods that moves from the Public Lands to these mills; Doug Denico, Director of Maine Forest Service; Rich Smith, Pleasant River Lumber; and Jason Brochu, owner of Pleasant River Lumber. He said the document he would like to see before the September 27<sup>th</sup> meeting is the 150 page document that was promised to the ACF Committee. Director Ashcroft clarified that it was not a single document that is 150 pages, rather it is 150 pages of different documents. Sen. Saviello requested that the GOC have one copy of the 150 pages. Sen. Katz said the Governor



said he would produce the documents, but only on a FOAA request. So, whatever the documents are would be the documents the Committee wants to receive. Director Ashcroft said OPEGA had a narrow scope around the Sales of Timber Harvested from Public Lands review and asked if the idea was still about trying to understand why Director Denico made the decision he made to divert the wood. The documents are responsive to the list of the questions the ACF Committee forwarded to the Governor and not all of them are germane to this review's limited scope. Sen. Saviello said when the ACF Committee put those questions together it was to get to the bottom line question that the GOC asked OPEGA to follow-up on. He said he has not seen those documents and he may be able to interpret them differently than OPEGA has based on his 33 years in the forest industry. He said the 150 pages is something they wanted to have. Sen. Davis agreed.

Sen. Katz asked if Director Ashcroft was concerned that the GOC was asking for documents outside the scope of the Report, or that they are not being definitive enough in what they are identifying. She said she was cognizant of the use of the GOC's role and OPEGA's role, in particular, to get at matters that are beyond what the Committee had tasked OPEGA to do. OPEGA has looked at a lot of information, talked to a lot of people and has drawn what they think are objective conclusions as far as they can draw them. Certainly there are some unanswered issues.

Rep. Pierce thinks the GOC should keep to the scope that they task to OPEGA. If the ACF Committee wants to be in investigation mode, he would suggest that Committee reconvene and take the matter up. He thinks OPEGA has done their work.

Sen. Katz suggested a middle ground. He asked if Director Ashcroft was in a position that OPEGA could go through the documents in question and segregate the ones they think are relevant to the scope of the review. The Director said OPEGA could do that, but the other issue is that the documents in OPEGA's possession are considered confidential working papers so she does not want to just turn documents over to the Committee. Sen. Katz said if OPEGA was in a position to identify which documents are relevant to the work they have done in the review the Committee can vote at this meeting to subpoena those documents. Director Ashcroft noted that before the GOC can subpoena they have to request the documents.

Sen. Katz suggested that the GOC request the 150 pages of documents the Governor's Office is in possession of that are relevant to this review. He said with respect to the request the Committee is making for documents and for witness appearances, the motion is going to be to request those documents and invite individuals to come, set a date for their response as to whether they are willing to do so or not, and if they are not, to also vote to subpoena them in light of that denial so the GOC will not have to meet again to take that vote.

Sen. Katz said Sen. Saviello has identified some individuals to come before the Committee and documents that the Committee would like to review. He asked Sen. Saviello if the loggers should be invited to the September 27<sup>th</sup> GOC meeting. Sen. Saviello thought you would get that information from the Foresters because they would have been delivering the message that they were told to the loggers as to why it needed to be changed. Director Ashcroft said OPEGA spoke to five of the folks that either had a stumpage or a logging services contractor and, of those five, two of them were not aware of there being an issue around what they were instructed to do. Two were told it was because Stratton was low on wood and the last was not given a reason.

Rep. Sutton asked if the GOC was going to request that Mr. Haynes be at the September 27<sup>th</sup> meeting. Sen. Saviello said he did not think that was necessary because he is more of a contractor, but will leave it to the Committee whether to request his presence. Rep. Sutton said she was interested to hear his dual role. Sen. Katz said Mr. Haynes will be added to the list of invitees.

Sen. Gratwick thinks the price was not part of the initial review, but it seems to be pivotal and is attainable information. Sen. Saviello thinks with the individuals identified earlier that information will come out.

Director Ashcroft understands the Committee is sending letters to the previously named individuals inviting them to the September 27<sup>th</sup> meeting and for them to let OPEGA know by a certain date whether or not they are going to plan to attend. If not, the GOC is in the process of voting whether to issue a subpoena upon their refusal to attend

the meeting. If necessary, OPEGA will issue the subpoenas for September 27<sup>th</sup> with the scope of the subpoenas to be to understand the February, 2018 diversion and relevant contents in OPEGA's report.

Rep. Pierce was unclear why the GOC would subpoena people to make public comments. Director Ashcroft said there is a distinction there to be drawn. Public comment is for anybody to come and tell the Committee what they want, but if the GOC holds a work session after public comments that is when the individuals invited to the meeting would be questioned by the Committee.

Director Ashcroft said she is also going to make a request, on behalf of the Committee, for any of the documents they think are relevant to this matter. They are going to make that request to the Governor. If a response is received that they are not going to provide the requested documents, then OPEGA is going to prepare a subpoena for those documents. She said those letters will be sent out August 21<sup>st</sup> with a requested response by September 4<sup>th</sup>.

**Motion:** That the Government Oversight Committee request the attendance on September 27, 2018 of the individuals Sen. Saviello identified (and Mr. Haynes as suggested by Rep. Sutton). That the Committee also send an invitation to the appropriate person to produce the documents that are relevant to this inquiry that the Governor indicated had been produced and that the GOC asks for responses by September 4, 2018 and if a positive response from any of the individuals or with respect to the documents request is not received by September 4, 2018 that the Committee will issue subpoenas for those people or documents. (Motion by Sen. Katz, second by Sen. Davis, motion passed by unanimous vote 11-0.)

Sen. Katz asked if there was objection to taking an item out of order. Hearing none, the Committee moved to **Unfinished Business, OPEGA Report on the Child Protection System.**

## UNFINISHED BUSINESS

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

- **Continue Committee Work Session**

Sen. Katz said the Governor plans on introducing multiple bills on this subject and some of the bills are in the Revisor's Office and one sits in the AFA Committee. It appears that when those bills do come out, that they are likely to be referred to the various subject matter committees of jurisdiction. Rep. Mastraccio heard that it looked like most of the Governor's bills will go to the HHS Committee. Sen. Katz said none of the bills are going to be referred to the GOC and some of the Committee members did not think the GOC should be taking any action at this time. He said asking OPEGA to do further work at this time would be difficult to do not knowing what is in the Governor's bills.

**Motion:** That the GOC table the Continued Committee Work Session on OPEGA's Report on the Child Protection System until the Governor's bills are out of the Revisor's Office and sent to the committee of jurisdiction. (Motion by Rep. Pierce)

Sen. Katz asked if Rep. Pierce would withdraw his motion in order to let Sen. Diamond speak on the matter.

Rep. Pierce withdrew the above Motion.

Sen. Diamond thinks the GOC has a core of information that goes with all of the subtopics and the general topic. He understands the Presiding Officers have made their decision and the bills will be sent to the various committees, but would ask, because of the information that GOC members have, that there be some provision within the joint standing committees where the GOC Chairs, or their appointees, could be at the meeting as part of the questioning of the public and part of the work session because the GOC should not walk away

from all they have done. Sen. Saviello agreed.

Sen. Katz noted that he and Chair Mastraccio have mentioned that these are unusual circumstances and although bills usually go to committees of jurisdiction, that the unique facts here supported that they come to this Committee. The Attorney General has opined that once the GOC is not in its investigatory status and is hearing a bill, it is their opinion the Committee would not have the subpoena power at that point.

Rep. Mastraccio said that once the Governor's bills are public and they don't deal with the issues on which the GOC has gathered information, then she hopes the GOC will bring the matter back up and put those bills in themselves. It is entirely possible that what comes out of the Governor's Office does not address some of the Committee's particular issues. The Committee needs to compare what is in the Governor's bills to OPEGA's recommendations.

Rep. Pierce spoke on the matter so could not present a tabling motion.

**Motion:** That the Government Oversight Committee moved to table the Continued Committee Work Session on OPEGA's Report on the Child Protection System. (Motion by Sen. Diamond, second by Rep. Pierce, motion passed by unanimous vote 11-0.)

Rep. Rykerson asked if there was a process where the GOC could suggest some amendments to the committee of jurisdiction. Sen. Katz said the Committee was not meeting again until September, but as individuals they can suggest amendments and when the GOC meets again and depending on where the bills are in the legislative process, the Committee might suggest something at that point. Director Ashcroft said Rep. Mastraccio was correct and said there are a lot of issues around the schools that the GOC has been talking about. Issues about schools sharing information and when they should be trying to validate that the reasons they have for excused absences, or unexcused, absences is true. She has not heard that there is anything like that coming in the Governor's bills. So, that is one area the Committee might want to review.

Sen. Katz asked that someone from OPEGA send the Governor's bills out to the Committee members when available.

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

- **Committee Work Session**

Sen. Katz said the purpose of the discussion and the subpoena issued to Bethany Hamm, Acting Commissioner of DHHS, was to continue the discussion of the scope of the GOC investigation, which in this case, was to talk about hardship extensions and exemptions from the sixty month life time limit. Secondly, to discuss ASPIRE, TANF Program, Fedcap's operation of that program, TANF's work participation rate requirements and the process for identifying and determining uses for TANF funds. There are three statutes relevant to this inquiry. Those are 3 M.R.S.A. ch. 21 which is the legislative investigating committee statute, 3 M.R.S.A. ch. 37 the OPEGA statute and 1 M.R.S.A. ch. 13 the Freedom of Access Act. In the past the GOC has conferred with the Attorney General's (AG) Office on how those statutes relate to one another and which governs the proceedings we are conducting. Sen. Katz said that we do not feel we will need any further guidance for this particular situation, but if so, we would seek out a representative from the AG's Office as necessary during the proceedings. The following proceedings will apply and all proceedings and testimony will be held in public session and will be broadcast over the internet and available to television and filming as is normal protocol and required under FOA with the exception of possible executive sessions for the purpose of the GOC consulting with their attorney on their legal rights and duties as allowed under Title 1, Section 405-6 E or for other purposes allowed under Title 3, ch. 21. As Acting Commissioner Hamm has been subpoenaed she will be placed under oath prior to the taking of her testimony. Prior to taking GOC members' questions, Acting Commissioner Hamm will be invited to make any statements she wishes to make. All questions to the Acting Commissioner will come from GOC members or GOC staff, in this case,

the Director and any staff questions will be posed through the Chairs and Leads, unless the Chair directs otherwise. There will be no questioning of the Acting Commissioner by anyone else present at today's meeting during the work session. Sen. Katz said he would entertain a motion with respect to the procedures.

**Motion:** In accordance with Title 3, § 422, I move that the Committee approve the order of procedure as outlined by the Chair. (Motion by Rep. Mastraccio, second by Sen. Diamond. The motion passed by unanimous vote 11-0.)

Sen. Katz asked Ms. Hamm to raise her right hand and to swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth. Ms. Hamm said I do.

Sen. Katz said during the time that the Acting Commissioner (Commissioner) is testifying, she and her counsel may object to any investigating committee action detrimental to her interest and the Chair would rule on that objection. The Commissioner may request that her testimony, or parts of it, be taken in Executive Session. That request would be granted unless this Committee votes to deny the request. The Commissioner may object to a decision to televise, film or broadcast her testimony. If there is objection, we must honor that. All televising, filming, broadcasting must cease during the testimony. Although it is still in public session, so folks can stay in the room. We do not anticipate this being a concern in this situation. The Commissioner, or counsel, may challenge questions as not pertinent to the subject matter and scope of the inquiry. If so, the Chair will ask for further clarification of the basis under which the question is being challenged. The Chair will explain the relationship believed to exist between the subject matter of the scope and the question and the Chair may direct the witness to comply in answering the question. That, to the Chair's direction, may be over-ruled by GOC vote, however. The witness may cite the fifth amendment as a reason not to answer questions. We don't expect that to happen today, but if it should happen, the Chairs could ask for an explanation of why that is pertinent or to decide to pass on the question unless it is important. In which case, the Chairs and Leads may confer with the AG on whether to direct the witness to answer. The Committee may also enter Executive Session to discuss this with the AG. At the end we will be voting on how this testimony is going to be released to the public beyond today's broadcast.

Commissioner Hamm thanked the Committee for having her at the meeting and, although did not have a planned formal statement, said those who know her know that her passion is in the work that they do within the Department of Health and Human Services (DHHS) and she has been part of DHHS for nearly 32 years. She is at the meeting to answer questions related to OPEGA's TANF review and hoped that she could bring some valuable insight into what she sees as a very positive study that was performed and thanked Director Ashcroft and the OPEGA staff, who were extremely gracious and professional to work with.

Sen. Gratwick asked about the specifics of the use of the TANF funds and whether they have reduced poverty, increasing education and having a beneficial effect on a segment of society that is not doing well. Has Maine really succeeded in reducing poverty and reducing generational poverty?

Commissioner Hamm wanted to make sure she understood the context of Sen. Gratwick's question. She sought to clarify if he was looking for her opinion as to whether Maine has moved the needle on poverty based on the policies that have been implemented. Sen. Gratwick agreed that was his question. Commissioner Hamm said OPEGA's report contains some policy changes that occurred in 2011-2012 and the major policy initiatives that she thinks he is interested in stem around the enforcement of the federal 60 month time limit in TANF as it relates to the federal law and also other various policy changes that have had an impact on the caseload decline. She said OPEGA's report very accurately characterized that so she was not going to go into a lot of detail. The 60 month time limit was to align them with the federal statute. Commissioner Hamm said they had situations where families' average length of time on TANF was 7 to 8 years, some extended out as far as 11 years. To characterize that the Department had families that were not making significant progress in moving towards self-sufficiency. Whether that was the cause of the program that was in place, or policies that were in place that allowed that length of time on TANF to continue, is behind them at this moment. She said because of some of those policies that were in place, when the 60 month time limit hit, they had a significant number of families that had already reached that limit. She said a percentage of the families had

not worked with DHHS to become self-sufficient and were probably less prepared to enter into the workforce. She did not think there was any disagreement, or perhaps there is, that 5 years on one program such as TANF is more than adequate time for families to re-engage in the workforce to become self-sufficient.

Commissioner Hamm said what DHHS is seeing now, for an average length of time, is about 3 months before folks become employed when they enter DHHS' program. Average length of time on TANF, due to increased earnings, has reduced significantly. DHHS thinks they are moving the needle on poverty and she believes they are, but it is slow going when you look at poverty for decades. She would ask what have we done as a country to really move that needle and in Maine that is what they are trying to do. The poverty statistics demonstrate that Maine is at a low since 2003 in terms of poverty, but continues to want to get better. As far as the TANF funds and what DHHS is using them for, the Committee had some of that information in the letter she provided, but said their approach is casting a wide safety net of a variety of programs that are assisting, not only our families, but our children. DHHS works with Families Future Down East, which is a national model. DHHS has also been engaging over the last year with the Administration for Children and Families on a six state work group that is titled "Whole Family Approach to Jobs" and some sitting legislators are working on that work group as well. They are engaging with the staff administration on Staff to Skills and this work expands across all families. They are also partnering with the Community College systems to get people into short term skill level degrees and certifications. DHHS has done a lot through working with the Legislature or by work done internally by increasing benefit levels, providing access to family development accounts to TANF eligible families where they can get a 4 to 1 match so they can save for a home. DHHS is also using TANF dollars to supplement the LIHEAP benefits so TANF families have an extra benefit to provide heating assistance for their homes. They also have invested a lot of the TANF dollars in youth who are at risk and she thinks that is probably the most understated work that DHHS has done. She says that because in order to get to generational poverty, in a lot of cases, you have to start with giving the children a safe place where they have good mentorship, access to food and programming that would divert them from the risky behaviors that they can get themselves into. Commissioner Hamm thinks the TANF grant has allowed DHHS much needed flexibility. It is a flexible program so they can start to cast a wider safety net.

Rep. Rykerson said what Commissioner Hamm is saying does not seem to jive with what was said about childhood hunger and that Maine is making negative progress in that area. Commissioner Hamm said TANF is a small part of childhood poverty. There are a lot of other programs, such as the Utilization of Summer Feeding programs and where does Maine stand with that. She would like to dive into that conversation, but she was not at the meeting to talk about that. She hears what Rep. Rykerson is saying and is why she said previously that there is more to be done, but it is not just the TANF program that is going to solve childhood hunger.

Sen. Gratwick said he appreciated the work that Commissioner Hamm has done in her Department, but there are some larger statistics as referred to by Rep. Rykerson. The poverty level being 4% nationwide, which here in Maine it is 13%, has gone backwards. Commissioner Hamm said regarding legislation that was passed in 2011, there was previous to that, a sanction process that sanctioned just the adult and then the TANF benefit would be reduced. As part of the 2011 legislation, they get 90 days, if it is their first sanction, to cooperate with DHHS. Then after that a full family sanction applies. They do get one opportunity where DHHS just removes the adult. If they sanction again, it is an immediate full family sanction. She thinks, in terms of the impact on children, it is more detrimental for children to be in a household where a parent is not adequately trying to become self-sufficient. What she means by that is, how are you going to move the needle on generational poverty if you do not have engagement with the parents in the household. Based on experiences, whether it has been in DHHS or in her own personal experiences, the value of seeing your parents get up and go to work, no matter how hard life challenges are, is invaluable to young children. She referred to Sen. Gratwick mentioning the TANF benefit being stopped and how are they going to nurture their children. She said nurturing of children goes well beyond a TANF benefit and certainly it is not DHHS' intent to hurt families. There is a lot of national debate around whether or not full family sanctions work, but she said having looked at the families during a desk review when they timed off TANF and the years of disengagement with folks based on previous policies, certainly did not set those children up in a better way.

Sen. Gratwick said there is no question that having good parents as a role model is appropriate. However, on the other hand, for a single mother who is fairly desperate, he was not sure what Commissioner Hamm said rings true to him. Commissioner Hamm said what she may have left out is there are good cause reasons for not cooperating with the program and DHHS does apply those good cause reasons. So in the case where childcare is not available, they would not be sanctioned for that. These are sanctions that occur when the appropriate supports are in place and there is a refusal to cooperate.

Rep. Mastraccio said the reason she thinks the GOC voted to do the TANF review was because the communication between DHHS and the committee of oversight was lacking and in Recommendation 1 of OPEGA's report it says that transparency and accountability for TANF spending decisions should be improved. She indicated that she understands that the Department disagrees with the recommendation that DHHS increase its legislative reporting because much of the recommended new reporting involves information already publicly available to the Department's reports to ACF and the State TANF Plan. Rep. Mastraccio said, for example, she did not know that ASPIRE had gone away and that Fedcap was doing the work. She said she learned a lot about DHHS at this Committee and thinks communication with the committee of oversight would be valuable and that the more legislators know, the more they can communicate information to their constituents. She asked for Commissioner Hamm's comments on the Department's disagreement to Recommendation 1.

Commissioner Hamm said the communication being referred to in DHHS' response is around the spending of TANF funds and that DHHS has to report to their federal partners, who publish a report annually on a variety of spending for all states. She believed the disagreement is with the Fedcap transition. DHHS did post an RFP, looked within their laws to determine whether or not they needed legislative approval and it was determined that they did not. They have subsequently invited the legislative oversight committee to their Opportunity Centers. She said Rep. Denno was there and asked a lot of questions in order to become familiar with it. Commissioner Hamm said a lot of reports are done already and they would not want to spend a lot of resources on duplicative ones. As far as other communications, she said she has been before the HHS Committee on numerous occasions. She said during the introduction phase she was able to go through what her office at DHHS was doing at that time in reference to running the Public Welfare Assistance Program. She has spent many hours in communication and provided that committee with a 5 year spending plan on TANF. Communication depends on what it is you are seeking to accomplish. She said that sometimes politics can get in the way and DHHS has provided a significant amount of information to the Legislature.

Rep. Sutton asked about the status of the \$21 million in fines the State is facing regarding noncompliance with the workforce. Commissioner Hamm said currently DHHS is facing fines/penalties for not meeting the federal working participation rates from years 2007 through 2011. In 2007 they were at the end of their process with the Administration for Children and Families and they have levied about a \$1 million penalty on DHHS. The remainder of the penalty has yet to be determined by the federal government as to how much they are going to require DHHS to pay or reduce their assistance grant by. There is debate happening about the reading of the statutes and whether Maine had improved enough. The State is at the Administration of Children and Families' mercy at this point as to how much of that \$29 million penalty will be levied against Maine. Maine does stand to have a significantly reduced penalty, but it comes down to how they will land on the interpretation of some regulations.

Rep. Sutton asked if there was any timeline of when a decision will be rendered and the State will either be presented with a bill or we will begin to have reimbursement cuts. Commissioner Hamm did not have an answer for that question. They had expected them yearly and have only just resolved the 2007 noncompliance. She could not give an affirmative date although she keeps hearing soon, but "soon" has been going on for about 5 years. Rep. Sutton said part of the reason for her asking that question is she wondered what the State could do with that money. There has always been limited resources and unlimited needs so was wondering what sort of help they could provide children and families if they had not been assessed the penalties. Commissioner Hamm said the penalty structure requires a reduction of certain percentage reduction based on your noncompliance year-after-year and requires the Administration for Children and Families to reduce your block grant. Maine currently gets \$78 million. So, there is a potential for a \$29

million penalty, although DHHS feels confident it will not be that much. However, it is still there as a possibility. She said the following year they have to make up the difference with additional General Fund spending.

Sen. Katz said the 60 month limit on TANF benefits also included the hardship extension and asked if the Commissioner could remind the Committee what those extension were and the procedure to get the extensions. Commissioner Hamm said that is what she tried to outline in the letter she sent to the GOC. She noted that the Legislature had the opportunity to weigh in after the policy was promulgated, not adopted. If she recalls correctly, in discussions with the Legislature, the hardship extensions were drafted as part of those discussions. She said the hardship extensions include: domestic violence; disability; caring for a significantly disabled family member; participation in a training or education program; working families; pregnancy; loss of job; and occurrence of an emergency situation.

Sen. Katz was trying to recall if, at the time the legislation was passed, there was an extension that was a last “catch all” or other good cause, or did the Legislature eliminate that extension the following year. Commissioner Hamm said she would have to go back and look at it.

Commissioner Hamm said DHHS took an administrative process around educating the families that were approaching their 60 month time limit and some of that was described to them before DHHS could take action to close an individual’s case. Fifty-five months is when program recipients get their first notification and then 30 days to their closure they will get notification again about extensions and an application to apply for one. She said DHHS took significant steps in looking at cases prior to closure that were getting close to the 60 month time limit to glean from their system whether or not the recipients might meet one of the extensions so DHHS could reach out proactively as part of their review. Commissioner Hamm said that is how the process works – 55 months, 30 days with an application and Fedcap is having conversations with folks as well in identifying potentials for extensions. The extensions come into DHHS and they purposely centralize those decisions because they want consistent application of the extensions that were granted. When you have 15 or 16 offices across the State sometimes it is very hard to maintain consistent application of rules. DHHS knew how serious these decisions were and the need to make sure they were making the right decisions and affording families that opportunity. DHHS housed the extension requests in the Central Office and assigned specific staff to manage those extension requests.

Sen. Katz asked who makes the decision on the extension requests. Is it a DHHS employee or a hearing officer. Commissioner Hamm said it is a DHHS employee with direct oversight from their Senior ASPIRE Program Manager. If an applicant disagrees with the decision they can request a hearing and the Hearings Officer will rule whether DHHS’ denial of the extension was or was not proper. He asked if Commissioner Hamm knew how many of the denials have gone to hearing, and if so, the approximate percentage of the appeals that are granted or denied. Commissioner Hamm did not have that information with her, but will research the request and get back to the Committee.

Rep. Pierce asked how long the first extension is good for, do applicants have the opportunity to apply for further extensions and are there limits on extensions. Commissioner Hamm said the extensions can range from 3 to 6 months at a time and this was the focus of discussions when the policy was being drafted. Some changes were made so that applicants can then apply for an additional 6 month extension in many of the categories that she described earlier. If somebody has a broken arm, for example, and they are scheduled to be able to have usage of that arm in 2 months then DHHS would probably grant an extension for 3 months and then revisit the situation with the family at that time to see if any necessary extension is needed. That is another piece of the process prior to ending their extension.

Rep. Pierce said, for example, a family has been on the TANF program for 5 years and the recipient gets pregnant with a couple of months left on the program. Can the recipient get an extension for 9 months and be on the TANF program for 7 years? The Commissioner said if Rep. Pierce was talking about the pregnancy extension, she believes it applies if they are in their 3<sup>rd</sup> trimester and then extends to the end of the pregnancy. It would then depend on any additional circumstances as to whether or not they would continue after that

point. Where DHHS sees the extensions predominantly are for those requesting them based on disability. So, if it looks like the medical information that is provided to them constitutes a disability extension, they could, and most likely are, going through the Social Security process to gain access to Social Security Disability or Supplemental Security Income. Those can take longer. If their claims are progressing and are meeting on the requirements, they would be granted another extension.

Rep. Pierce asked the Commissioner if she thought 5 years is an adequate amount of time to get job training, education, etc. Commissioner Hamm said based on her experience, on the average length of time most folks are on TANF, the majority of the population can transition into self-sufficiency within the 5 years and that length of time is more than adequate.

Rep. DeChant noted the inference on occasion at previous GOC meetings and from her constituents that people clearly acknowledged that extensions exist, but people have also said that there is a culture that does not encourage, properly frame or provide keen awareness of extensions being an option. Commissioner Hamm said that is not a culture that she has fostered or wanted staff to foster. There are some cases that may slip through the cracks and that could be the case for any of the work DHHS does. She said she has always instructed and directed her staff in those situations, to act on them appropriately and to provide due process for all of the families. She has worked closely with the advocates when those situations occurred and has taken steps to implement changes. Commissioner Hamm said she disagrees with the assumption that DHHS acts in that manner, but if there are situations that are brought to her attention, either through constituents or reviewing processes, she and her staff were always responsive to rectify them.

Rep. DeChant said from the Commissioner's former comment that when people in the program are reaching their 55 months and 30 days prior to the end of their TANF benefits. She asked if there was any assistance, or any kind of triage, that happens where there is not a personal contact because perhaps the recipient is overwhelmed when they are in that situation and may have missed DHHS' letter. Commissioner Hamm said this is where the work of Fedcap becomes critical. It's important to be actively case managing those households who are approaching the 60 month time limit and making sure they are having those conversations about what the next steps are or what the options are now that the recipient was reaching that place. She would expect, and it is her understanding, that they do connect with DHHS on cases where they are helping to facilitate an extension for a family.

Sen. Saviello asked how many of the people that have left the TANF program being "termed out" where they have no more children in the home have stretched the truth a little by saying they were single parents with one child when perhaps the father was living with them so had a double income. They did not apply for an extension because DHHS may look a little bit more into the background of what is going on. Commissioner Hamm said she can get the numbers of families that termed out for what we call "not eligible child", so no longer eligible with a minor child in the household. How many termed out and really didn't seek any extensions or re-engage with DHHS because of what Sen. Saviello described she would not guess at. There is not an analysis that DHHS has done around that question.

Rep. Rykerson said one of the recommendations in OPEGA's report is that the decision-making process on the TANF funds should be more transparent and asked if the Commissioner had any specific examples of how she has tried to implement making the decision-making more transparent. Commissioner Hamm said TANF is a flexible grant and is meant to be a flexible grant so DHHS has approached it in that way and is why they have been able to cast a wider net of services based on some of the programs DHHS is supporting with TANF dollars. She did not know exactly what the right answer is, but what she would say is DHHS approaches all of its decisions methodically and with a great deal of consideration, data and expectations and outcomes when it is going to fund a program with TANF. DHHS is doing that through their contracting process, but she did not think that it has been a total lack of transparency and referred back to her conversations with the HHS Committee about what DHHS is funding with TANF and why they were making those decisions.

Sen. Katz said that Maine receives other money from the Federal Government that goes into the General Fund and usually there is a great deal of discretion on how that money gets spent and it is the Legislature that



makes that decision. He said the State is receiving a large amount of money from the Federal Government to help families in distress and in this particular situation, at least in the way the law exists it is DHHS who is deciding on how to spend that money. He questioned whether that decision-making should lie with the Legislature after consultation with DHHS, or if it should lie with DHHS. He asked where the Commissioner thought that decision-making ought to lie. Commissioner Hamm said the TANF block grant funds do not come into the General Fund. Its funds do not get drawn down from the Federal Government until there are expenditures to report. So, it is not like Maine has a pool of General Fund dollars at DHHS' fingertips. DHHS has to prove the expenditures to be drawn down. She said the Legislature does and has had a lot of say in policies that represent and makeup a significant amount of spending in the TANF programs. Whether it is through bills or legislation that is part of a budget, they come through the Legislature. The Commissioner thinks it is appropriate for the Legislature to enact policies that directly affect the spending the TANF programs.

Sen. Katz thinks the percentage of our children in Maine living in deep poverty has increased, not decreased over the last several years and asked the Commissioner if that was so. Commissioner Hamm said you could have a number of discussions just relative to poverty in general. When you look at children in extreme poverty, it is the lowest it has been since 2003 so Maine is making some progress. Sen. Katz thought he had read that despite the low unemployment in the State of Maine that the percentage of children living in poverty has increased over the last several years, not decreased. The Commissioner said there are multiple reports and would depend on what report he is referring to, but certainly she can go back and do a little more research to answer his question more adequately.

Sen. Katz said at a time when he thought the stats for childhood poverty were going up, why has DHHS chosen to stockpile and save the TANF dollars available rather than spending them on programs that would help with those childhood poverty statistics. He said Maine does not receive the money, but has the ability to draw on that money. Maine has been stockpiling that money and the balance is going up every year and asked why Maine was not using more of that money. Commissioner Hamm thought Sen. Katz's question was a fair question and said as flexible as the TANF block grant is, it is really difficult when you are making decisions about spending TANF funds in a variety of ways and that the expenditures are allowable. DHHS needed to gain a good understanding of allowable expenditures in order to spend the funds appropriately and not get themselves into trouble. She said it took DHHS a little while to figure that out. If you look at the 5 year plan in TANF, DHHS has figured it out and has their I's dotted and T's crossed so they will not be cited for any inappropriate spending. Now that DHHS has done that work, there will be a greater level of spending occurring.

Rep. Sutton said she found, according to the Census Bureau, it appeared that child poverty was going down and discovered information on the Kids Count Data Center that show poverty is decreasing in Maine and wanted to highlight that Maine is doing better and the children are being better served.

Sen. Gratwick understands that Maine receives \$78 million per year for TANF funds and over time DHHS potentially used \$140 - \$146 million and recently has been spending down the funds not previously used. He asked how much money is currently available and how did DHHS spend those funds in areas that were not appropriate for the TANF guidelines. Commissioner Hamm said on page 23 of OPEGA's TANF report it shows a description of the carryover funds and the 5 year plan. She said you can carry over block grant balances from year-to-year. There were previous policy changes that allowed DHHS to use the carry over funds for things other than basic assistance. So, a lot of the carry over funds are being used in that manner going forward. DHHS had to get a solid foundation around the allowable expenditures for TANF funds and they did that with the help of a consulting group who did a fantastic job. As part of implementation of new programming, you will see the expenditures pick up as a result of the planning done and changes made legislatively. Sen. Gratwick asked the name of DHHS' consulting group and said if their report was available he was interested in receiving a copy. The Commissioner said it is the Public Consultant Group and thinks it is mentioned in OPEGA's report.

Sen. Diamond referred to the parents and then family that would be removed from the TANF benefits for whatever it may be and asked if there was an intra-department sharing of that type of information with, for example, Child Protection Services. Is TANF set up so it can share information with other appropriate bureaus, or groups, within DHHS? Commissioner Hamm said currently DHHS' system does not directly talk to each other. It is more of an ad hoc process and if they want to have information about families that might be on TANF with Child Welfare it is not an ideal system. When a family is being served by another part of the Department there is line of questioning usually and there might be disclosure that the family is receiving benefits. The Commissioner said with systems that do not directly talk to each other, it is difficult.

Sen. Libby said there was \$146 million sitting in the TANF account at the end of FY17. He asked what the ending balance in FY18? Commissioner Hamm said she will get that information for the Committee.

Sen. Libby said DHHS gets roughly \$75 million a year and the unwritten practice for the past 4 or 5 years spends \$50 million a year. He asked if they have doubled their spending in the last fiscal year? The Commissioner would have to look at that data and get back to him.

Sen. Libby referred to the \$20 to \$30 million dollars in fines from the Federal Government and asked if Commissioner Hamm expected payment for those fines to come out of the TANF fund's balance that has been accrued. Commissioner Hamm said you cannot pay back federal fines with federal money. They will reduce Maine's on-going block grants for a federal fiscal year like they did with DHHS' 2007 penalty and then the following federal fiscal year DHHS will have to make up the difference in State spending. Sen. Libby asked if there was a way to swap State spending for federal funds to mitigate the impact of the TANF program. Commissioner Hamm said there is a way to identify additional State spending that is already occurring in order to help with that.

Sen. Libby asked if the Commissioner had an opinion on how well the Fedcap contract is going. Commissioner Hamm said DHHS' Division of Audit said it is one of the most tightly managed contracts out there because of the nature of the delivery of service that is being provided. Having only been in existence since January of 2017 she would say they are performing well in a lot of areas. However, there are other areas now as a department and in conjunction with working with Fedcap, where they want to take more of a look and tweak. She thinks you have to give any contract of this nature a chance to be implemented to see what works and then take a look at what is not working and adjust from there. She would be foolish to say the contract is working to perfection. The Fedcap contract is performing well, they are engaging folks, there is accountability in that model which DHHS was looking for, but there are also some areas they want to see changed. DHHS is in constant dialogue with Fedcap around issues, they have advocates reporting to DHHS constituents' concerns and are addressing them DHHS is going to continue to do that.

Sen. Libby asked how long the Fedcap contract was for and the Commissioner said it was a 6 year contract and that DHHS has the authority to make amendments. At this time DHHS does not have enough data or experience with Fedcap in order to make any amendment changes at this time, but they are currently working and talking with Fedcap about where they can improve.

Sen. Libby asked; with the fiscal year having recently ended, did Fedcap come in on budget, under budget or over budget?. Commissioner Hamm said it is under budget. He asked if she had a sense of the numbers. The Commissioner did not, but will get him the information.

Rep. Pierce asked, if when DHHS' MACWIS system gets replaced, will the Department be able to share information for families who are not meeting their contract or have asked for exemptions because of domestic violence, drug abuse, etc.? Commissioner Hamm said there is considerable opportunity for collaboration amongst all DHHS Offices in the safety and protection of Maine's children and TANF is one of those areas where she thinks we could make improvements. Sen. Katz said Rep. Pierce's question did talk about the TANF funds. He said Commissioner Hamm is at the meeting to talk specifically about TANF and not to talk about Child Protective Services and wanted to stay within that topic.

Sen. Gratwick asked if the Committee could get the contracts DHHS has with Fedcap. Commissioner Hamm said they are public information and the Committee can get copies.

Sen. Gratwick asked what the appropriate performance measures are for the program. Commissioner Hamm said in the TANF program, DHHS is required, under federal, law to meet certain performance measures around work participation rates. Those measures are spelled out for them. She said there are some State statutes that also are a factor which DHHS needs to implement as well. The metric and work participation rates are being discussed nationally regarding what those measurements should look like going forward. The Commissioner said it is part of the Fedcap contract, and that DHHS places focus on those work participation rates because of the penalties they face for not meeting them. Other metrics are in job retention because DHHS wants their families to be placed in employment and then maintain and retain that employment so they do have metrics building into the contract for retention. She said the model previous to the Fedcap model did not have that component, but Fedcap is doing that retention work. The Commissioner said when families become employed there is always the need, typically, for transportation and child care support. So, DHHS works to implement those services with the family prior to them timing off of TANF. She said those are areas DHHS is looking to tweak, not just about the retention, but what families also needed to assist them in becoming successful after they have timed off TANF. There is no detailed analysis.

Sen. Gratwick asked how the TANF and associated programs are more effective. Commissioner Hamm said the Governor's report looked at what the average wages were resulting from the employment compared to the pre-policy baseline. It looked at, for example, this family timed off TANF, where were they then in terms of employment and where are they now in terms of employment. She thinks the report established that there was an increase in wages. To Sen. Gratwick's question of what can DHHS do better in improving the wage outcomes for TANF families, she would go back to what she said around working with Fedcap in order to, not only move families into employment, but after they are employed, help them to move up the economic ladder because the reality is that families need to start somewhere. They are not all going to be able to land jobs in many cases that put them at a significant level. The work that DHHS is doing with the Administration for Children and Families around a whole family approach, and the work they are doing with Fedcap in bolstering their support post-employment tries to give families a network of social capital support where they can continue to climb the ladder. It comes down to how do we position them initially to continue that growth. That is what DHHS is going to work on.

The GOC members thanked Commissioner Hamm for being at the meeting and answering their questions and appreciated the information she provided to them

Sen. Katz asked Director Ashcroft to outline the GOC's options at this point. Director Ashcroft said OPEGA will make sure that the GOC gets answers to their questions and the information the Commissioner said will be provided. She said the Committee has not yet voted on whether or not to endorse OPEGA's TANF report. The other question is whether there is any action, in particular, that the Committee wants to take on either OPEGA's report recommendations or from what members have heard at GOC meetings.

Sen. Katz said the GOC will be getting information from DHHS. So, clearly they will be discussing TANF at another meeting. He asked if any member sees a reason why the Committee should not endorse OPEGA's TANF report.

#### - Committee Vote

**Motion:** That the Government Oversight Committee endorse OPEGA's Temporary Assistance for Needy Families Program (TANF) Report. (Motion by Sen. Diamond, second by Sen. Gratwick)

**Discussion:** Sen. Libby wanted to make sure he understands the process. The GOC can gather information from the Department subsequent to the GOC voting on OPEGA's report and incorporate it as an addendum. Sen. Katz said yes. Director Ashcroft said it has been talked about putting together a GOC addendum to OPEGA's report. The addendum will lay out a summary from the GOC meetings, the information that has

been gathered and if there are particular positions or comments that individual Committee members would like to make sure are out there publicly in conjunction with the report, we would put that in the addendum, as well as, the summary of whatever final actions the Committee decides to take on OPEGA's Report. OPEGA will start drafting the addendum and would keep adding information to it until the Committee is done with its work. OPEGA will draft the addendum and bring back for the Committee's review and approval.

**Vote:** The above vote passed by unanimous vote 9-0.

It was the consensus that the Committee would defer any further discussion on OPEGA's TANF report until the next GOC meeting.

## ANNOUNCEMENTS AND REMARKS

None.

## REPORT FROM DIRECTOR

### • Status of Projects in Progress

Director Ashcroft said the **Maine Citizen Initiative Process** is still awaiting OPEGA resources to restart. The **Re-EmployME System** review is in preliminary research and OPEGA is still working on the **Special Project related to Child Protection** that has the two pieces around the DHHS initiatives, what status those are in and what help they think those will be. They are also getting input from frontline staff on things like retention, job effectiveness and job efficiency. The plan is to provide the GOC those pieces of work that are completed rather than waiting until the whole special project is complete. She said OPEGA has been mapping out the time line on the methodology that they want to use for gathering the frontline staff input and it is looking like OPEGA will not be ready to report that out until November. Director Ashcroft said the ideal reporting out time would be December, but OPEGA will not have a Committee after the first part of December so she is letting the Committee know that it is going to be cutting it close to try to get the information for a meeting in November and it may be a situation where it may need to wait until January, 2019. She thinks the January timing would be appropriate because that is the time the new committee is ready to make some decisions or the information might be used for the budget discussions. OPEGA is doing a survey followed by interviews so it will take 6 to 8 weeks to get that work done. OPEGA is still working on the **ETIF** review and is in the report stage. OPEGA is still working the draft report. OPEGA has not reset a timeline for when they expect to report the review out and she has not had an opportunity to talk with the OPEGA Team Lead on the review. OPEGA is not working on the **Maine Capital Investment Credit** and will not be for a while longer.

## NEXT GOC MEETING DATES

The GOC scheduled meetings for September 19 and 27, 2018. Director Ashcroft noted that the Public Comment Period and Work Session on OPEGA's Sale of Timber From Public Lands Report and she did not know at which of the meetings the Committee wanted to talk about any of the Child Protective bills or any further work they would want to do in Work Session regarding that. The Committee now has an additional TANF Work Session.

Sen. Katz suggested that the GOC continue the TANF Work Session and by that time the Legislature will have seen the Child Protective bills, so can also continue the Child Protective Work Session on September 19<sup>th</sup>. Other members of the Committee agreed. Sen. Diamond said he will be out-of- state on the 19<sup>th</sup> and asked if there would be final decisions made on the Child Protective topic. Sen. Katz did not think there would be any definitive actions taken. The Committee may decide to weigh in on a particular part of it, but thinks Sen. Diamond can consult with the GOC Chairs and will have an impact on any actions taken.

Director Ashcroft said how much she appreciated working with all of the Committee members, noting that some members have served on the GOC for a number of years. She said it has been an incredible experience and

challenge to help them tackle some of the issues that have seemed pervasive over time and continually returning to the Legislature and others that were just in the moments. She said the Committee has kept OPEGA staff on their toes constantly and thinks that is a good challenge. Director Ashcroft said she will miss seeing members, but will be around to assist whenever necessary until October.

Rep. Mastraccio thanked Director Ashcroft for all the help she provided to the Committee and said they will miss her, but hopes she enjoys her future. She said she can't tell Director Ashcroft how much she appreciates how much she has done for her as a member and as a Chair of the GOC. She knows how much work the Director and OPEGA staff do and the Committee appreciates it.

Sen. Diamond said he has served on the GOC for 8 years and said he was giving Director Ashcroft the David Trahan award because he had to be so persistent to get the GOC/OPEGA into existence and she has set the bar for the GOC/OPEGA.

Sen. Katz said he has worked with the Director for 8 years and said there is only one thing that everybody in State government can agree on and that is that OPEGA has the respect of everybody who knows anything about it and that is largely a testament to Director Ashcroft's leadership. She has been the only leader OPEGA has had and he hopes she leaves OPEGA with a great deal of pride for what she has created.

## **ADJOURNMENT**

The Chair, Sen. Katz, adjourned the Government Oversight Committee at 1:08 p.m. on the motion of Rep. DeChant, second by Sen. Diamond, passed by unanimous vote.