



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

MEMBERS:

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SEN. DONNA BAILEY  
SEN. RICHARD BENNETT  
SEN. SUSAN DESCHAMBAULT  
SEN. JEFFREY TIMBERLAKE  
REP. KATHLEEN R.J. DILLINGHAM  
REP. AMY ARATA  
REP. H. SAWIN MILLETT, JR.  
REP. MARGARET O'NEIL  
REP. HOLLY STOVER

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**June 4, 2021**  
**Accepted June 25, 2021**

**Call to Order**

The Chair, Sen. Libby, called the electronically conducted Government Oversight Committee to order at 9:26 a.m.

**ATTENDANCE**

Senators:	Sen. Libby, Sen. Bailey, Sen. Bennett and Sen. Timberlake Absent: Sen. Keim and Sen. Deschambault
Representatives:	Rep. Arata, Rep. Millett, Rep. O'Neil and Rep. Stover Absent: Rep. McDonald and Rep. Dillingham
Legislative Officers and Staff:	Lucia Nixon, Director, OPEGA Amy Gagne, Senior Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA/Clerk, GOC
Executive Branch Officers and Staff Providing Information to the Committee	Justin Andrus, Executive Director, Maine Commission on Indigent Legal Services Eleanor Maciag, Deputy Executive Director, Maine Commission on Indigent Legal Services Matthew Dunlap, State Auditor

**Introduction of Committee Members**

The members of the Government Oversight Committee introduced themselves.

**Summary of May 14, 2021 GOC Meeting**

The Summary of the May 14, 2021 meeting was accepted as written.

82 State House Station, Room 104 Cross Building  
Augusta, Maine 04333-0082  
TELEPHONE 207-287-1901 FAX: 207-287-1906

## New Business

- **Quarterly report back from the Maine Commission on Indigent Legal Services**

Director Andrus said he believes MCILS is doing a good job with quality control given the resources they have and have communicated effectively with the lawyers (rostered attorneys) about how and what they bill for are in line with MCILS's expectations. They are at an impasse in terms of moving forward of where they are now. MCILS has made great progress in the first few months and reached a point where their staffing resources prevent them from making a lot of further change to increase the level of oversight they are doing. There is no opposition on their part to doing that work, but they simply do not yet have the people. There is a lot of information in the material he has provided to the GOC about MCILS's budget. He has not received any indication that they should anticipate MCILS's budget being increased in any substantial way from where it is now. Director Andrus is concerned about that and is working with DAFS Human Resources to bring on the 4 limited duration hires that the Governor has supported, but is not going to be able to pay for those positions through the biennium. He is also concerned that there simply are not enough people to fully do the job.

Director Andrus reported that he and Deputy Director Maciag did meet with State Auditor Dunlap and his staff. They had a productive conversation about what a reasonable audit structure looks like. MCILS has not implemented that structure yet because that conversation just recently occurred. They are looking to continue MCILS's work to establish the risk triggers talked about at previous GOC meetings and to flag cases for specific review. That may look like review of a random number of cases. The number of cases of lawyers audited will be relatively low, but it should both allow audits of cases that are significant outliers and also provide an effective deterrent effect. His understanding is that the IRS, for example, uses a 1% audit rate for significant wage earners and considers that to be both efficient and effective as a deterrent. Director Andrus is working from that perspective because of MCILS's resources.

Director Andrus noted that MCILS has had great compliance with lawyers addressing the risk triggers they now have in place for the high hour days billed. They have lawyers writing MCILS checks to reimburse for slight overpayments by MCILS. Going forward there should not be overpayments, but he thinks it is great that the lawyers are participating and engaging in that self-audit work and voluntarily paying back what needs to be paid back. It is not a tremendous amount of cases or money, but it is indicative of seeing change in terms of MCILS's relationship with counsel.

Sen. Libby asked Director Andrus to remind the GOC, and also for the benefit of the public, about the new positions MCILS is seeking funding for, the temporary nature of that funding and where they are in seeking ongoing funding for those positions.

Director Andrus said MCILS is seeking temporary, limited duration positions of the stop gaps and are seeking permanent positions through the Legislature. MCILS is approved, by the Governor, to hire 4 limited duration hires. As he understands it, these people would be hired for a maximum of 2 years and would not be part of MCILS's baseline budget and do not increase the headcount. The Governor's perspective, as expressed to him, is that those 4 positions are to be paid for from the agency's carried forward funds. MCILS has about \$4.2 million that will be carried forward from Fiscal Year 2021 into 2022. Some of that money came from FY20 into FY21, some of it accrued during FY21. He said, for accuracy, that money has not landed in any of MCILS's accounts yet, but assumes that will happen because it has been authorized. His concern about the funding is that they were underfunded in their baseline for this coming biennium. As a result of that, Director Andrus anticipates that they will be in a deficit for their baseline operational needs by the end of FY23, or perhaps by April of 2023. That is before they spend a half a million dollars a year on the 4 positions. He is currently paying attorneys at the rate of about \$325,000 a week, plus paying about \$15,000 to \$20,000 a week

in non-counsel expenses so if MCILS is a million dollars short, that is going to drive back by several weeks the date on which they run out of money for FY23.

The 4 new positions would be in 2 tracks. There will be an attorney and a paralegal in each of the 2 tracks. One track would be on the training, supervision and quality side oversight and the other would be on financial oversight. MCILS also has their accounting technician as part of their existing staff. She would have the role that falls slightly outside of the audit function in keeping the operation running, but she is very diligent about identifying issues and he wanted to recognize her for that. She would have a tie-in role with the 2 additional people who are on the financial oversight side. Director Andrus has had conversations with other Legislative Committees about the credentials and experience qualifications for those positions. The reason there is an attorney at the top of each of those tracks is because of the need for that level of professional experience in assessing either the quality of somebody's services or the reasonability of that service. He said one of the complexities of doing audits for MCILS is that it goes beyond looking to see if the numbers line up properly, it is also looking at are they professionally reasonable under the circumstances. Hopefully, the 4 limited period positions will be rolled over to be the first 4 of the new permanent staff through the initiatives that MCILS requested in October, and ultimately amended by the Judiciary Committee. There is a bill, he believes it is LD 1687, pending before the Legislature that provides MCILS with additional staff. The goal is that these 4 people do become permanent and are the first 4 of more to become part of MCILS's baseline budget.

Sen. Libby asked for an update on what MCILS and State Auditor Dunlap has worked on regarding auditing and accountability work.

Director Andrus said, in the sense of true audit, MCILS is doing limited work. Audit, or financial control structures come in a series of phases, starting with the identification of the necessary controls and the communication of those controls to the group that is using the money, followed by the identification of which submissions, or sets of transactions, should be reviewed in greater scrutiny. There is that scrutiny and then there is what do you do about it. At the outset he was talking about having communicated enhanced controls to MCILS's attorneys and he thinks there is some tweaking to be done on that front, but thinks they have largely accomplished step 1 of the controls. They can get into a lot of details, but what it comes down to is that attorneys must accurately reflect what they did when submitting their bills and MCILS needs to see that information. Things that have been identified by OPEGA, for example, include attorneys billing where the attorney name does not line up with the person who did the work making review difficult. MCILS has communicated to them that that is unacceptable. Staff people entering time in the name of attorneys is not acceptable. In his perspective that has always been unacceptable and will continue to communicate that unequivocally. MCILS is back to doing inefficient voucher review as a product of implementing their 90 day time limit for submission of vouchers to be paid which has resulted in all, or substantially all, of the vouchers are being reviewed. That is not to say something may slip through. MCILS is reviewing a lot more information and it does appear there is much better granularity data so it does appear attorneys are doing a reasonably good job.

Director Andrus said the next step is to decide what triggers a voucher review and Justice Works (database provider) is working on some of that, but they have not completed that work yet. Their work is going to include things like checks on data input. For example, for any given type of payment it would say phone call with client, there is going to be a limit and if you exceed that limit it is going to ask you and that will allow them to catch typographical errors. It is not going to catch fraud with a person still making misrepresentation, but they are going to work to eliminate the typos that might have been occurring.

MCILS staff was talking with the State Auditor and his staff about a plan to have a filtering system that looks at the weighted average of by case type that is triggered if a voucher amount exceeds what they expect to see for the case type, or if the case total exceeds the case type. It needs to be a weighted average because some

vouchers are low because they are associated with another case. You might spend \$1,000 of time working on client case "A" and on case "B" you might spend \$6 worth of time for opening and closing a case. They need to make sure their averages don't look funny by looking at the \$6. MCILS is going to look at the average and then check, for example, if we exceed an average on limits for time periods and that is work that Justice Works is currently working on implementing in the data system. He does have a database tool that lets him build database queries or he can ask Justice Works for assistance and then actually work with the data, but that is not an effective way to report out on a rolling basis. Just for a frame of reference, Director Andrus said, MCILS is addressing approximately 300,000 hours a year of attorney time. The typical entry is probably .2 hours. Based on that, they are looking at about 4 million entries a year so they need to automate as much of that work as possible to have a hope of catching it. That is the filtering stage. He also thinks that MCILS will need to have a random stage because it will be possible to figure out the system and stay underneath the limits. MCILS will not make public what those limits are, but they don't want somebody to experiment so want to make sure that folks know there is some possibility that they will be picked for a review. The determination will be the next phase.

The investigative phase is a little bit in flux. Director Andrus said Rep. Harnett, a member of the Judiciary Committee, has put forward bills that would give MCILS some powers they need for investigation. It would give MCILS a statutory recoupment power, would give the Commission subpoena power to be exercised through the Executive Director and it would allow, on a case-by-case, lawyer-by-lawyer basis, the ability to dive in and review. Doing this work is a promise he does not want to make yet because he does not have the people to do that work. Even with the new people MCILS is adding, there will be a very limited capacity to engage in that level of investigation. They could do some and with more people they could do more. Currently if MCILS was going to take any action, it would be limited to taking somebody off the rosters and once MCILS does that he loses the jurisdiction. Also, he does not want to take that action unless he has to because he does not want to de-roster somebody who provides good representation to clients for a financial error. Fraud is a different than a financial error so recoupment gives MCILS the opportunity to work with the lawyers to get repayment without blasting him/her off the list and hurting the clients. Currently, that action would have to be in the form of a civil action, either brought by the Attorney General's Office or they would have to give MCILS consent to hire outside counsel to do that. He said although he is a lawyer, he is not the Commission's lawyer, so he is not able to be the person who pursues that kind of action.

Sen. Bailey asked, in terms of auditing if his plans include, and she assumes that currently he does not have the ability because he does not have the staff for in person random visits.

Director Andrus said not random audits, but that could potentially be done based on information supporting that need. MCILS could certainly include random audits, but that is up to the Legislature in a sense that if they were staffed to be able to do that. When talking with the State Auditor, he did some math about costs and if they had a non-attorney skilled staff person in an audit role, that person would cost the State about \$110,000 to \$120,000. That amount of money is equivalent to one MCILS attorney full time for a year and that in turn means, on average, 84 or 85 cases. Every person that they assign to the audit function on a full time basis is equivalent to 84 or 85 cases that MCILS could have served with the same money. You need to think about where the value in the audit proposition is compared to the value of the same money being allocated to serve MCILS's underlying function.

Auditor Dunlap commended Director Andrus and MCILS staff for putting so much thought into a plan under strained circumstances and thinks they have done an extraordinary job. He and his staff had a lengthy conversation with MCILS staff about how they view the world of audit. The Office of the State Auditor has 33 people and a lot of what they do is examine controls put in place by agencies as they expend funds under certain programs to see if those controls actually work. It is not 100% guaranteed because, for example, for the Medicaid Program you are talking about billions of dollars that pass through that program. You can't really

examine every transaction and, to Director Andrus's point, you have to examine the cost effectiveness when doing controls. The real purpose here is to give assurance that the resources that are allocated for this purpose are being used for that purpose as effectively as possible. One of the analogies they come across is if you have a restaurant that does all cash, you start from not having any locks on the doors and then you move forward from that. How do you do your bank deposits? Is it cost effective to have an armored car do your bank deposit for you or do you have 2 people reconcile the accounts and then somebody else does the deposit and then another person pays the bills? Those are simple cost-effective controls. What they talked about was going through the basic frameworks of controls and the international standards. Every country does it a little differently, but the United States uses the COSO framework. That is the Counsel on Sponsoring Organizations of the Treadway Commission which came about in the 1970s and then was amplified greatly after some of the accounting scandals at Enron and Worldcom, for example. Your work is in terms of risk assessment and basically measuring and prioritizing those risks. Do you really want to be examining every transaction that encompasses .2 of an hour? That is not cost-effective and will not tell you very much.

Auditor Dunlap said MCILS talked about having different tiers of examination that would be done internally in the Executive Director's office at the Commission. They would review the red flag transactions that may prompt further inquiry. One of the cases they talked about was a misdemeanor case that could lead to someone being deported where an attorney would spend much more time than he or she would on a normal misdemeanor case. When you look at the broad scope of what you deal with in criminal law, which are the misdemeanors, elevated misdemeanors and felonies, that gives you a pretty broad framework to look at some of the samplings and see if they make sense. Having the rolling weighted average makes a lot of sense. When the State Auditor's Office does audits they do not do things randomly. They have a process for assessing the samples that they test. They test the controls and that will give them a good indication of how effective the controls are. What Director Andrus has subscribed to, a 3-tiered process, he thinks would work well. It needs some refinement and monitoring, but he thinks it is a much better place than where MCILS started from. The real point here is to give the Legislature, and the people of Maine, the assurance that the scarce resources that are allocated for indigent legal representation are going predominantly to that purpose.

Rep. Millett thinks the Auditor has touched upon the themes that the GOC commented on earlier when they previously met with MCILS: the effective and appropriate use of resources, internal controls and the issue of a look-back to the problems in the previous administration where there were concerns expressed in terms of billing, including over billing. He was curious if the Auditor and the Director had talked about the issue, that the GOC struggled with at a previous meeting, of can we afford to do a look-back on the effective use of resources under the previous Director or are there models going forward that are more appropriate for Director Andrus and to utilize the services of the Office of the State Auditor, limited as they may be, in terms of zeroing in on the internal control focus. He thinks the Auditor has touched on some items that are important in terms of the handling of money and a regular reporting from the Director to the Commissioners so that any issues of expenditure lacking oversight or, perhaps anything approaching impropriety, could be zeroed in by or with the help of the Auditor on a real time basis. He said he was focusing his comments on asking are we basically working on a go forward basis and acknowledging that the staffing support from the Auditor's Office is not going to be there to do a look back. Are the people involved going to be able to assist MCILS on a regular basis going forward to point out problem areas and solve them before they become real? Auditor Dunlap said they had talked at great length about that. He knows that OPEGA did an analysis of what resources it would take to do a full look-back and it is not cost-effective to do that. Even if you had the people available to do that work, noting OPEGA thought it would take 2 analysts about 10 to 12 months working full time, the issue, is then do you recoup anything? Is it possible to recoup anything even if you are able to track it down? If you are talking about open fraud, one of the aspects of fraud is that fraudsters don't keep good records, for obvious reasons, so it is difficult to track that kind of thing. Going forward is probably more cost-effective and would probably yield a little bit more bang for the buck. The Auditor's Office is in the same position as OPEGA. They have limited staff, who are brilliant and work feverishly all year to get the State single audit done, which represents a

significant outlay of resources. One of the philosophical questions, and he thinks Director Andrus touched on it, is that all the work done to develop the comprehensive annual financial report by the Controller's Office and then the Single Audit by his office, does anybody really look at it? He thinks a lot of people do look at it. He knows Rep. Millett is probably more familiar than anybody in State government with these documents in his work in Finance and on the Appropriations and Financial Affairs (AFA) Committee over the years. In his conversation with Director Andrus, he indicated that just the work that MCILS has already done has given them much more detailed information because people tend to behave a little bit differently if they think somebody is paying attention and that is one of the interesting aspects of control. Auditor Dunlap said another thing that Director Andrus touched on, in his own observation of how the law works, is about 95% of the Revised Statutes of Maine are crafted for about 5% of the public. Most people do their utmost to comply with the law. Some people don't care very much, don't think it matters and then you have people who simply gain the system and they are the ones that sometimes gets tangled up in the Judicial system.

Getting back to the core of Rep. Millett's question about doing a full look-back, Auditor Dunlap said he now sees fraud because he looks for it. He sees it in the paper every day, an embezzlement somewhere of an organization and depending on the individual circumstances you can recoup money. His office would have to devote significant resources to try to do a look-back and he thinks what you would know at the very end, is what you know now and not much more. It is obviously always the decision of the Legislature of how to allocate resources. His view is the resources are better employed going forward then they are looking backward.

Rep. Millett thanked Auditor Dunlap and said he thinks he made some very good points. He always found whether working for a board or a governor, you cannot over communicate budget to actual information on a regular meeting basis and let those board members, or in this case, the governor, know how things are going. The oversight committee for MCILS, the Judiciary Committee, needs updates about internal controls, staffing, etc. and he thinks those updates are critical. He agrees with Auditor Dunlap and thinks Director Andrus is focused also on a going forward basis so the more the GOC can do to encourage that relationship, at least in the conversational sense, and the reporting to the oversight committee, who are going to be more interested in this internal control going forward, is important.

Rep. Millett said he did not want Director Andrus to leave without some feedback from the GOC on the MCILS budget. He knows that the 4 categories talked about in OPEGA's report are all worthy of extended discussion, budgeting, auditing, quality control and determination of indigency. He was thinking as listening to Director Andrus, the presentation made to the Judiciary Committee, and thinks Sen. Bailey and other members of the GOC, Sen. Keim, members of the AFA Committee, Rep. Cardone, who has previous experience on the Judiciary Committee, are aware that the Judiciary Committee gave 7 very comprehensive recommendations for future funding of MCILS. Only 2 of which are before the AFA Committee that Rep. Arata, Sen. Bailey and he are serving on. Although he is not able to speak for them, or leadership, he knows that on his side of the aisle, both Sen. Timberlake and Rep. Dillingham, and knows Sen. Libby has the experience of the GOC and remembers the conversations that started almost 2 years ago about MCILS. Rep. Millett thinks it would be reasonably certain to assume that the Committee would agree to the rate increases, or the range increases, for the newly selected MCILS Director and to the carried forward request and knows that some of them would like to do more than what is in the current change package. There were recommendations for 14 additional ongoing staff and Sen. Bailey can comment in more detail on them, along with the public defender concept. This is going to come down in the next week and half, to how much can we fund that would support a more efficient and complete staff and program oversight going forward within the resources available and the time they are limited by. He said they may not resolve this entirely by adjournment day, but he does want to make sure that the Director knows that some legislators would like to go beyond those 2 minimal issues. He is confident and has had a conversation with the Chief Executive, about the flexibility in the hiring of the limited period people

with funds carried forward. Speaking for himself, Rep. Millett said he would like to do more than the 2 items that are currently in the change package.

Sen. Bailey agreed with Rep. Millett's comments and from her perspective, as he indicated, she would want to do more and make sure that MCILS does have the staffing and resources to continue what they have started and doing good work going forward as indicated, not necessarily looking back. She does look forward to working with her other AFA Committee members on this and hopefully can continue to make progress.

Sen. Libby asked Auditor Dunlap if it was fair to say that his Office has provided the support services to MCILS that the GOC had discussed and perhaps for the next quarterly report, there will not be as much activity on his part.

Auditor Dunlap agreed and said the Auditor's Office will continue to have conversations with MCILS's staff as they refine their ideas and are happy to provide feedback based on their experience, but thinks MCILS is doing great work.

Sen. Libby said he appreciated the Auditor and his staff's efforts to jump into this project at the GOC's request and thinks that the presentation that he and Director Andrus gave today helps to give him a bit more confidence that we are heading in the right direction. The Legislature has a couple of weeks ahead of them where they will hopefully have conversations around the funding component, as well as, some other issues before the Legislature and obviously at MCILS's next quarterly check-in will hopefully have some answers to these outstanding questions and will be able to hear about how MCILS is continuing on their path to getting in a better position.

The members of the GOC thanked Director Andrus and staff and Auditor Dunlap for providing the report-back and for answering their questions.

## **Unfinished Business**

- **Continued discussion of OPEGA's tax expenditure reviews**
  - **Draft Outline for Joint Study Order to Review the Process for Ongoing Review of Tax Expenditures** (Senator Libby)

Sen. Libby said Rep. Millett and he are interested in how the tax expenditure review process has unfolded over time so have continued to have discussions about how to make some refinements and adjustments. Although both of them are experiencing the end of session time crunch that everyone on the Committee can appreciate, they are hoping to propose a Joint Study Order that would be considered by the House and Senate to create a process for interested parties to get together over the summer and fall to dig into the details around the tax expenditure review process and be able to make a report back to the Taxation Committee and this Committee at the beginning of the next Session. Sen. Libby said Rep. Millett has reviewed the language to the Joint Study Order and believes he is comfortable with the Order. At this point, he wanted to have Director Nixon walk through the Order and see if there is any feedback from Committee members before moving forward.

Director Nixon summarized the Joint Study Order to Create a Working Group to Review the Process for Ongoing Review of Tax Expenditures by the Legislature. (A copy of the Joint Study Order is attached to the Meeting Summary.)

The Working Group will make recommendations and any necessary, or appropriate changes, to statute and would then provide a report by the first Wednesday in December, which is the standard required reporting date for interim work.

Sen. Libby asked if there were any volunteers who would like to serve on the Working Group?

Rep. Millett said he appreciated the work Sen. Libby and Director Nixon did in putting the Joint Study Order together. He said he got the cart before the horse and it was a busy time of the year when he raised this issue. He thinks the design of the Work Group, membership and focus on process and laws in trying to make better use of the work that OPEGA does on the GOC's behalf and working with GOC and the Taxation Committee, looking at it from a perspective of both stakeholders, time commitments, and zeroing in on the priorities does address everything that he wanted to do from the beginning.

Sen. Libby said there is no action for the GOC to take and assumes from there being no comments, the members of the Committee are fine with letting the Order proceed. The Joint Study Order will be presented on the Senate floor as a Joint Order and hopefully will pass the Senate and go to the House for adoption and then to the Legislative Council for funding.

Rep. Arata noted that it was ironic that you will be reviewing the reviews. How very government of them to review the reviews.

Sen. Libby said he appreciated Rep. Arata's comment. He thinks this is born out of that discussion earlier in the year of improving the turn around time for tax expenditure reviews and for him that is the real impetus for the review.

- **Continued discussion of potential GOC requests for information in advance of future consideration of the request for OPEGA review of the RFP Process Administered by the Department of Public Safety, Bureau of Highway Safety and associated Department of Administration and Financial Services procurement policies**

Director Nixon reminded the Committee that they heard the RFP review request at their last meeting. The GOC made potential information requests before acting on the request. Given the length of the information request list, the Chairs suggested that OPEGA pull together an organized list to bring back to the Committee to talk about what is needed at this point in time.

Sen. Libby noted that he was absent at the time the GOC had the review request discussion. The list is substantial and he did not yet have a good sense of whether the Committee really wanted to proceed with taking further action on the request so wanted to see if the Committee could refine the list or pare it down so that it is manageable.

Director Nixon summarized the list. (A copy is attached to the Meeting Summary.)

Sen. Bailey did not have anything concrete in terms of shortening the list, but from her perspective she would like to get an initial determination in terms of was this just a unique circumstance involving this vendor and this Department, or is there something systemic either with the RFP process, this particular agency and/or the process in general. She is not sure how to get at that, but that is what her focus would be.

Rep. Arata agreed with Sen. Bailey and said perhaps a good way to accomplish it is to have an update of the 2008 OPEGA report. She is sure some things have changed since that time, but maybe they haven't. The report might be able to provide members with all the information they need for Section B of the list.



Sen. Libby asked the Director if pulling the rules and policies in statute governing procurement, plus providing the GOC with the 2008 OPEGA report was a reasonable request. Director Nixon said not having been at OPEGA in 2008 she would have to familiarize herself with how specifically relevant that report will end up being to this question. She has not had the opportunity to do that yet, but OPEGA can look through the report to see how germane it is and what things can be updated. “B1” and “B5” she thinks would be doable.

Sen. Libby said along those lines he saw Sen. Keim’s request under section A, “A6” and asked if Director Nixon could help the GOC get that clarification. Director Nixon noted the RFP would be readily available, but was not sure the members wanted that level of detail. Sen. Libby wanted the RFP. He said perhaps OPEGA staff could work on a few clarifying questions that they could transmit to the appropriate folks at the Department of Public Safety and the Department of Administration and Financial Services (DAFS), maybe 3 or 4 questions and asking them to answer in writing. The next GOC meeting is on the 25<sup>th</sup> and that turnaround time may not be realistic, but can try. Director Nixon said if the questions are clear and get them out soon, that may work.

Rep. Stover agreed with Sen. Bailey and said if the Committee can look at the systemic issues around the RFP process and thinks the statute can get to that. The questions she had asked would probably be addressed in that statute.

Sen. Bailey didn’t think it would be too difficult to at least get the appealed decision in this particular RFP and that perhaps that will let them know how much more detail is needed. Her hope would be that there would be a lot of detail in that appeals decision and that might be the place to start in terms of just tying together this unique situation with the more systemic problem.

Rep. Millett concurred with all of the comments made. He does think the GOC needs to be careful about this review request because they should not be setting themselves up as a body that hears concerns with the RFP process that might be seen as short stopping or interfering with the appeal process. He thinks that is “B2” on this list. As the Director frames the questions that she can do that better than the Committee can do collectively highlight anything that might concern her about the way in which the RFP process was handled and the scoring and ratings, but not get into the level of who is right and who is wrong in an appeal like forum because that is a little awkward for the GOC to be in and could be a bad precedent to set. He does like the idea of getting the questions and answers before the Committee to look at whether anything is in violation of the standard practices and rules of conduct. He just does not want the Committee to be an adjudicatory board or review panel going forward. That could be troublesome.

Sen. Libby agreed with Rep. Millett and said perhaps a way to frame this up from a big picture perspective is that the GOC has been presented with an example of an alleged discrepancy in the RFP and appeal process so the example may be illustrative for them, but it is not the Committee’s role to investigate that case. It is using that example in the context of trying to examine whether there are systemic issues with the RFP and appeal process and thinks that is the goal of the GOC.

Director Nixon said she thinks she is clear on the information that will be requested for the next GOC, either directly or through the administrating agencies. She is a little less clear about whether the Committee would also want to invite Department/Agency staff to the next meeting.

Sen. Libby said he was open to having participation at the next meeting by representatives from DAFS and the Department of Public Safety. To respond to the Director’s concern, he thinks they could work on putting an information request together and transmit that to the 2 departments. He also thinks the Committee will

have questions for them if they attend a meeting. He knows he is saying something different than what he just said a moment ago, but perhaps they can invite them to answer the Committee questions at the next meeting (rather than respond to questions in advance) if that sounds good to members.

Director Nixon asked if the GOC also wanted to invite Rep. Bell and his constituent to the next meeting. Sen. Libby said they are welcome to attend and observe should the Committee have questions for them. There should be no expectation that they make a presentation at the meeting on the 25<sup>th</sup>.

No Committee vote needed for the further actions taken on this request for review.

## Report from Director

### • Status of projects in process

Director Nixon said at the June 25<sup>th</sup> GOC meeting OPEGA will be presenting the **Maine Citizen Initiative and People's Veto Process** report. On the **Seed Capital Investment Tax Credit** evaluation OPEGA is working on drafting the report and getting everything lined up to be presented to the GOC late in the summer. On the **Maine Commission on Indigent Legal Services** OPEGA is doing work related to Indigency Determination and is actively analyzing surveys and interview data that has been collected. They are also looking at getting additional administrative data that will help answer questions. That review is in fieldwork. As soon as staff get freed up, OPEGA will start work on the **Survey of Frontline Workers at DHHS/OCFS**. The GOC recently approved the parameters for the **Credit for Rehabilitation of Historic Properties** and the **Research Expense Tax Credit** and OPEGA is actively working both of those reviews. The Historic Properties Credit is OPEGA's first priority.

The GOC just got its first report back from MCILS and another one will be scheduled in 3 months. The Committee also touched based on the active review request.

Rep. Millett referred to an email sent by Director Nixon to the Committee on May 17<sup>th</sup> with references to all of the LDs that were in play at that time that could affect OPEGA and the GOC's work going forward. He found it interesting that 3 of the LDs refer to the MCILS discussion the Committee had earlier. He asked if there were any amendments pending that would influence or tie to the GOC's work previously on the Pine Tree Development Zones. Rumor mills were flying yesterday that amendments were in the works and he wondered if any of OPEGA staff, or GOC members, are alert to anything that would be pending in the next few session days that directly impacts the GOC's position on PTDZ and MCILS.

Director Nixon did not have an update for PTDZ, but is happy to see if there is anything she can get to the GOC on it. On MCILS she said there are 3 bills, in addition to what Director Andrus was talking about that are in the change package. There are 3 bills that have been voted in the Judiciary Committee as majority ought to pass reports related to MCILS; these are divided reports. Those bills have not come to the floor yet and her understanding from Director Andrus is that some of the things that the Judiciary Committee had proposed be folded into these Committee bills. Those are LD 1685, 1686 and 1687 should Committee members want to keep their eye on them. LD 1686 is about a geographic pilot for a public defender's office, LD 1685 would transfer the financial screening function for eligibility from the Commission to the Judicial Branch and LD 1687 is the comprehensive bill that she believes Director Andrus did reference in his presentation that makes the number of different changes to the Commission and does provide appropriations for ongoing funding. She guessed that would get placed on the Appropriations Table if it got through on the floor. To the best of her knowledge they have been voted on, but not yet reported out of the Judiciary Committee.

Rep. Millett said that was helpful information and asked if the Director would say all 3 bills on MCILS would have fiscal notes on them. Director Nixon said LD 1687 does has a fiscal note, the public defender's office pilot project also has a fiscal note and the one that moves the financial screeners does not. Rep. Millett noted that those bills will come on a calendar on the fly and asked if the Director could share the fiscal notes for the LDs with the GOC members and track down any information on PTDZ. Director Nixon will email a summary of what bills are coming to the floor that are related to the GOC/OPEGA work to Committee members.

## **Planning for upcoming meetings**

### **Committee discussion regarding GOC meetings during the interim**

Sen. Libby said the next meeting is scheduled for June 25. His expectation is that the current so called "super order" that governs electronic remote meetings will still be in effect on June 25<sup>th</sup>. If the Legislature adjourns on June 16<sup>th</sup>, they would not adjourn sine die until after veto day, which would occur a couple of weeks after the 16<sup>th</sup> so the June 25<sup>th</sup> meeting will likely continue in the same remote format.

Historically the GOC has taken July off so he would propose they continue that tradition and then plan to meet monthly in August, September, October and November. The Committee decided to meet the second Wednesday of each month.

Sen. Libby noted that the presentation of OPEGA's report on the Maine Citizen Initiative Process will be given at the June 25<sup>th</sup> meeting and the public comment period will be held at the following meeting,

### **Next GOC meeting date**

The next Committee meeting is scheduled for June 25, 2021 at 9:00 a.m.

## **Adjourn**

The Chair, Sen. Libby, adjourned the meeting at 10:49 a.m. on the motion of Rep. Millett, second by Rep. O'Neil, unanimous.

## **Proposed Outline (DRAFT)**

### **Joint Study Order to Create a Working Group to Review the Process for Ongoing Review of Tax Expenditures by the Legislature**

Presented by Senator Libby

1. **Name:** Working Group to Review the Process for Ongoing Review of Tax Expenditures by the Legislature.
2. **Membership:** 8 members in total, including 4 members of the Senate, including members of each of the 2 parties holding the largest number of seats, and 4 members of the House, including members of each of the 2 parties holding the largest number of seats; of the 8 members, 4 members from the Government Oversight Committee and 4 members from the Joint Standing Committee on Taxation
3. **Chairs:** first named Senator, first named House member.
4. **Appointments of Members:** By Speaker and President (as required by Joint Rule 353).
5. **Duties:** The working group shall examine and make recommendations regarding the process for the ongoing review of tax expenditures by the Legislature. In its work, the group shall consider:
  - a. The statutes governing tax expenditure reviews under Title 3 and Title 36;
  - b. The experiences of key entities involved in tax expenditure reviews under Title 3 since 2015, including the Government Oversight Committee, the Office of Program Evaluation and Government Accountability, the Joint Standing Committee on Taxation and the Department of Administrative Services, Maine Revenue Services;
  - c. Tax expenditure review policies, approaches and processes in other states; and
  - d. Input from stakeholders engaged in the administration of tax expenditures, including but not limited to DAFS/MRS, DECD and other state agencies.

The working group shall make recommendations, including any appropriate statutory changes, for improvements to the tax expenditure review process to ensure it meets needs of the Legislature for oversight, evaluation and improvement of tax expenditure policies for the State.

6. **Staff Assistance:** Legislative Council shall provide staffing services (OPEGA and OFPR).
7. **Report date:** 1<sup>st</sup> Wednesday of December 2021 (as required by Joint Rule 353).

**List of Potential Information Requests regarding:  
Request for OPEGA Review of RFP Process Administered by DPS  
and Associated DAFS procurement policies  
(Sponsored by Rep. Bell)**

Prepared by OPEGA for the Government Oversight Committee (6/4/21)

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**A. Potential Information to Request regarding the specific RFP that led to this Review Request:**

- A1. Copy of the RFP issued: Sports Marketing Services, RFP 202006107 (Rep. Millett)
- A2. Timeline of activity for this RFP and the subsequent appeal process (Sen. Keim)
- A3. Information on past contracts and history with incumbent vendor for Sports Marketing Services (Sen. Keim)
- A4. Information about the appeal, including minutes and summaries of Awards Appeal Panel meetings and decisions (Rep. Millett)
- A5. Information about steps taken by DPS/BHS to procure services after the contract was invalidated through the appeal (Sen. Keim)
- A6. Explanation of what is meant by “irregularity” in the sponsor’s description of the RFP (Sen. Keim)

**B. Potential Information to Request regarding the State Procurement Process:**

- B1. Rules, policies and standard procedures governing state procurement (Rep. Arata, Sen. Keim)
- B2. Summary/explanation of the state procurement process, the appeal process and what can happen after an appeal (Sen. Keim)
- B3. Information on past practices in state procurements in terms of time frames (Sen. Keim)
- B4. Historical data on state procurements (for prior 2-3 years), including: (Rep. Stover)
  - a. Number of RFPs issued
  - b. Number of appeals
  - c. Date of RFP release
  - d. Date of contract award
- B5. 2008 OPEGA Report: *State Contracting for Professional Services: Procurement Process* (Sen. Deschambault)

**C. Potential Individuals to Invite to Answer Questions regarding the Request**

- C1. Representative Bell (Sponsor) and constituent Steve Woods
- C2. Representatives of Department of Public Safety including: Commissioner and Director, Bureau of Highway Safety
- C3. Representatives of Department of Administrative and Financial Services, including: Commissioner, Chief Procurement Officer, Chair of Contract Review Committee and Chair of Awards Appeal Panel