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REP. ANNE-MARIE MASTRACCIO
REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

August 20, 2015

Approved October 15, 2015

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:08 a.m. in the Cross Office Building.

ATTENDANCE

Senators:	Sen. Katz, Sen. Johnson, Sen. Davis and Sen. Diamond Joining the meeting in progress: Sen. Gerzofsky Absent: Sen. Burn
Representatives:	Rep. Kruger, Rep. McClellan, Rep. Campbell, Rep. Mastraccio and Rep. Sanderson Absent: Rep. Duchesne
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Wendy Cherubini, Senior Analyst, OPEGA Scott Farwell, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Legislators	Sen. Volk and Rep. Gilbert
Agency Officers and Staff Providing Information to the Committee:	George Gervais, Commissioner, Department of Economic and Community Development Jim Smith, Chief Information Officer, Office of Information Technology Janet Whitten, Children's Licensing and Investigation Manager Phyllis Powell, Director, Licensing and Regulatory Services

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

Chair Katz asked if there was objection to taking an item out of order. Hearing none the Committee moved to **Unfinished Business - Review Status of Open Recommendations From OPEGA's 2006 Report on Economic Development Programs in Maine**

UNFINISHED BUSINESS

- **Review Status of Open Recommendations From OPEGA's 2006 Report on Economic Development Programs in Maine**

- **Department of Economic and Community Development (DECD) Response to Outstanding Actions as of April, 2015 – Commissioner Gervais**

Chair Katz recognized Sen. Volk and Rep. Gilbert, members of the Labor, Commerce, Research and Economic Development (LCRED) Committee, who joined the GOC at the Horseshoe for the discussion of Economic Development Programs in Maine. It was noted that Rep. Mastraccio is also a member of the LCRED Committee.

Chair Katz welcomed Commissioner Gervais to the meeting to discuss Economic Development Programs in Maine. Commissioner Gervais provided written comments for his presentation to the GOC. (A copy is attached to the Meeting Summary).

The GOC's comments and questions included:

Rep. Mastraccio noted that she was at the February LCRED meeting that the Commissioner referred to regarding the presentation on Pine Tree Development Zones. She recalled LCRED was told that the report issued was a preliminary report and the official report would be presented at a later date because there were questions being asked. She said legislators are making decisions based on reports they receive and need to receive final reports and hear presentations. Rep. Mastraccio does not think the questions asked at that meeting have ever been answered and there will continue to be questions until there is a complete evaluation of the program. She did not recall a meeting, or presentation being done, when the final report was issued and asked to be corrected if she was wrong.

Commissioner Gervais said he did not know where the idea that it was a preliminary report came from. DECD did not consider the report to be preliminary. They did have another report that came in June as a follow-up, a separate piece called for in their RFP that was for a one-time evaluation of where Maine stands in comparison to other states when taking into consideration the programs covered in both the R&D Report and the Comprehensive Economic Development Report. Both were submitted to the Legislature and presented on the day Rep. Mastraccio is referring to. The Commissioner said the report had never been preliminary in his mind and it is complete in terms of the Pine Tree Zone Report. DECD received a response rate of seventy-nine percent when the Consultant requested information from Pine Tree Zone Program participants. He considers that a successful rate of response when seeking input from companies that currently are not compelled to report. He said he does consider what is within the January Comprehensive Economic Evaluation Report, specifically on Pine Tree Zones, to be a complete report and they can be comfortable making judgments on the program based upon that.

Rep. Mastraccio said she remembered the Consultant's representative that was presenting the report saying that some of this information was not yet complete, but the report was being presented then because the Legislature was only going to be there until April. She also remembered it was not the complete report because the Consultant had discussed the fact that a lot of the information they had gotten back was not complete, or they had not gotten enough information, and that is why some of the information was substantially different in the final report from what was presented then. Being a member of the LCRED Committee she looked for the final report so the Committee could discuss it.

Commissioner Gervais did not understand why there was an expectation that DECD be the one to take action on recommendations that were made to the Legislature in OPEGA's 2006 Report. He sees DECD's job as making sure they follow what statutorily they are required to do and the Department does that to the best of their abilities within the shrinking resources they have had over time. Commissioner Gervais said OPEGA's 2006 Report has not been DECD's playbook at all. He refers to it, has read it and finds interest in it and learns from it, but it is not DECD's playbook.

Chair Katz noted that some of the programs being evaluated by DECD as required by statute, both in the R&D and comprehensive Economic Development evaluations, are tax incentive programs that will now also be evaluated by OPEGA under the new tax expenditure evaluation process the Legislature established. The other economic development programs DECD evaluates have similar goals and purposes as the tax expenditures and he had questioned whether it would make the most sense for the other economic development programs to also be evaluated by OPEGA under the same process just established for tax expenditure review, especially as DECD did not have the staff to do it and also needed to hire a consultant to ensure the evaluations were independent.

Sen. Katz noted that Commissioner Gervais indicated he thought it was premature to have OPEGA evaluating the other economic development programs. He asked the Commissioner why he thought it was premature.

Commissioner Gervais said he thinks DECD has some of the most valuable information they have ever had in the Comprehensive Economic Development Evaluation Report and when you also look at the Report for June that talks about where Maine stands from a competitive standpoint against other States, it becomes even more credible and more important to continue the secured contract DECD currently has with the independent third-party consultant. The Commissioner thinks it should be done outside government by an independent third-party. He said DECD does not have an expert on staff, but that also means they do not have an expert on staff that is steering the outcome of a third-party independent. He encouraged GOC members to read the entire report and the June report and said until members read both reports he would not make a judgement to combine them with the OPEGA effort on tax expenditures. Commissioner Gervais said that was his opinion and caution.

Commissioner Gervais said a section of the June report talks about how site selection works. It could be a company that is already in Maine who is looking at expanding and reviewing sites all across the country, or it could be a company who does not yet exist in Maine and is looking for a site. He said in either case there is a process that a company goes through in comparing the states. By the time the State of Maine gets the phone call to ask what programs the State offers, the company has already sifted and sorted other states out. The June report includes a discussion of a study of how Maine ranks from a competitive standpoint on factors companies consider when assessing different sites.

Director Ashcroft followed-up on what Commissioner Gervais said. She said she had a conversation back along with the Commissioner about the recommendations that were coming out of the Consultant's reports and she observed that there was no action being taken on the part of DECD, or the Legislature, to make sure that the recommendations the evaluators were making were getting considered and acted on as necessary. She said part of the value of the independent evaluation is to take the results and make sure that something is done with it. Director Ashcroft said she would be interested in the Commissioner's perspective on whose responsibility it is to take what is in those reports and then shepherd them through whatever process needs to happen to get those recommendations understood and addressed, either at the executive level, or the legislative level as appropriate. She asked the Commissioner for his view of whether it is the Legislature's responsibility or DECD's by virtue of commissioning the report. The Director thought that is part of what has gone wrong, there has not been a follow through and an opportunity to get the questions answered that the report raised and she thinks that is a critical piece.

Chair Katz said the State is spending a lot of money, on tax incentives and other economic development programs and there needs to be a system to figure out if the money is being spent wisely which it still feels like we do not have. He asked Commissioner Gervais why it did not make sense to evaluate all these programs in

the same comprehensive period and systematic way, having a single process rather than DECD doing some evaluations and OPEGA doing others, perhaps with a different focus or with different criteria.

Commissioner Gervais said when DECD crafted the RFP for an independent contractor, Director Ashcroft was involved. DECD asked for her input because they knew this type of discussion goes on in the Legislature and understands what OPEGA's role is and what legislators often ask of OPEGA. DECD wanted to align how they administered that evaluation with legislative needs, and he thinks the effort was there to do that. The Commissioner said Director Ashcroft had a lot of input into the RFP and what DECD ended up with for a product.

Commissioner Gervais said the users of the programs use them collectively, they consider all the programs the State offers that may apply to their situation and the cost of doing business in the State, how all that compares to a different location. He said in reviewing programs one at a time the State could be slowly shooting itself in the foot if you eliminate programs without taking into consideration how they are impacting or working in combination with other programs.

Chair Katz noted that DECD did not take into account how one program impacts others when the Department does its review of, for example, the Pine Tree Zone. DECD is not taking a look at some tax exemption that the Legislature has granted which may be part of the piece of whether a business locates in Maine or not. He asked isn't DECD doing the same thing of analyzing a particular program. Commissioner Gervais said not really. DECD is looking at a host of programs and how they all work together.

Sen. Volk thinks what Director Ashcroft and Commissioner Gervais were both getting at is are we even at a place where we can make use of these programs, or make use of these evaluations. She noted the State is spending money on a DECD third-party evaluation, is also using government resources for OPEGA to evaluate, and asked if the State was actually changing anything based upon what those findings are. She said are we in a position where DECD's budget has been cut for economic development so much that it does not matter what the reports say because the State does not have the resources to implement any of the recommendations. Sen. Volk finds that to be extremely frustrating and does not think it is isolated to economic development. She said the reports are almost irrelevant because the State has budgeted themselves out of being able to use them.

Sen. Johnson said he would expect that if there are new positions or resources needed to implement recommendations made in a report then the Commissioner should be proposing those to the Legislature in the budget. Similarly if there are statutory changes needed to achieve the aim of a recommendation, those needed changes are something that LCRED and AFA Committees should be hearing from DECD about.

Sen. Johnson asked the Commissioner to clarify what he thinks is the right solution for compelling businesses to provide information as he was unclear whether the Commissioner thought that authority should be with DECD or MRS.

Commissioner Gervais said he was just pointing out that there used to be a requirement in statute for businesses to report data to DECD. He thinks that system worked at the time, but does not recall the circumstances that were going on because he was not the Commissioner at that time. He did not know why that requirement got pulled from statute and why the reporting requirements of businesses got changed. However, he thinks if language was put in place where DECD would have a process where they ask for the data, give notice that the data is really needed, and if the information is not received in thirty days then the business's name will be turned over to MRS. Commissioner Gervais said any action taken from that point on with regard to penalties, ought to be done by MRS rather than DECD because it conflicts with DECD's role. DECD's role is to help businesses and the Department cannot be pounding them over the head at the same time. He agrees that the data is needed and there should be higher than a thirty percent response rate.

Commissioner Gervais said OPEGA's 2006 report recommendations have not been DECD's playbook especially since he found a DECD 2008 response that indicated that all of the actions agreed upon were met. If there has been action expected that has not been taken since then, that is what they need to have a further discussion on. The Commissioner said requirements that got moved into statute as a result of OPEGA's recommendations DECD currently meets within existing resources. He said DECD would, however, need additional staff to handle the requirement that DECD review all new proposals for the criteria in section 13070.0 because there is no way DECD could keep up with all the different economic development proposals that come through 2,000 bills in the Legislature. To do an analysis and report back to the Legislature all within the same session is impossible for them to do, yet DECD is statutorily required to do it. There is an obvious hole there.

Chair Kruger referred to the document "Making Maine Competitive" that the Commissioner provided as the State's economic development strategy. He asked if that was DECD's playbook and, if so, how Commissioner Gervais felt he was doing on that playbook after being in his position for four years. Commissioner Gervais said it was a two step process and DECD was stuck on step one still.

Chair Kruger noted one of the earliest things the current Administration did was do away with the State Planning Office and then create the Office of Policy and Management. He asked if that made the Commissioner's job more difficult going forward. Commissioner Gervais said it was not a negative, but said he would have liked to have the economist position assigned to DECD. He said as the current discussion continues he has been thinking of ways DECD may ask for the Office of Policy and Management's assistance with the work that is left undone.

Sen. Diamond referred to the lack of DECD staff to meet current responsibilities and the Commissioner's comments that since 2004 DECD has had a twenty-five percent reduction in staff. He asked if Commissioner Gervais had requested additional staff in his budget and, if so, was that rejected in the overall administrative budget and, if not, where has the failure come in terms of getting the staff at a level where he thinks it should be. Commissioner Gervais said he has to live within a certain budget and, if he wanted to increase staff, he would have to cut program monies. That was not an option because they are down to the bare bones on programs. He said there is not one program DECD is currently running that is not successful. Commissioner Gervais said DECD has great staff who work hard, but thinks it is important that the current programs remain in place.

Sen. Diamond asked whose rule that was because other agencies have increased their budget. Commissioner Gervais said it is a matter of priorities and did not know if he could answer the question in the detail Sen. Diamond would like to have. He said DECD did start out with a certain budget number and he was asked to find a way to cut more from it. The Commissioner said he was not going to cut people so that is when they came up with a way where some money is being returned by the Maine Technology Institute. If that is permanent, however, then damage has been done to the Maine Technology Institute. Commissioner Gervais said if he is given a budget number he has to live within, then that is what he has to do. Sen. Diamond said he understood and thinks there are legislators who would like to assist DECD with getting more staff that the Commissioner sees as critically important to meet DECD's responsibilities, but the Commissioner needs to be able to make that request.

Rep. Mastraccio referred to several specific recommendations made in the recent DECD Comprehensive Economic Development Evaluation report prepared by the independent evaluator regarding the need to capture and maintain program data to allow for evaluation. She noted that these recommendations were made specifically to DECD, not OPEGA or the Legislature, and they noted that legislative changes that may need to be made. Rep. Mastraccio said she didn't recall seeing any legislation on this put forth by DECD and she didn't know of any other actions that had been taken. She agreed DECD probably does not have enough staff to do what the recommendations suggested, but she asked what attempts and where is DECD in implementing those recommendations. She asked how the Legislature could help. Commissioner Gervais said there has been a lot of discussion around confidentiality issues with MRS and knows Director Ashcroft has had those discussions as well. He said DECD did not put forth any legislation on any of the points referred to by Rep.

Mastraccio, but he certainly expected that the confidentiality issue would be discussed. He thinks the issues are bigger than any of them realize as to MRS being able to share that data and said it is not just confidentiality, it's how the data is received and whether or not they can break out the detail DECD needs. He also thinks the more accurate way is being able to get the data directly from the businesses and that is the piece they need to work on.

Rep. Mastraccio said the GOC is trying to figure out how it can help to ensure that data is available for review and to make decisions on. The low response rate they have been getting is concerning. The GOC is asking for the Commissioner's input on what is needed, whether that is more staff or a different way of doing it. She thinks there is too much money involved to just say it's too much work or there is no way to do it. Commissioner Gervais said his suggestion on getting to that issue is on pages 19 and 20 of the information he provided to the Committee.

Rep. Campbell asked how the Commissioner addresses and supports the Maine economic development process and how would DECD evaluate the assets of Orrington and Bucksport. Commissioner Gervais said DECD does not discuss projects publicly because they have lost too many projects when they find their way into the press prematurely. DECD's entire staff is very silent and it is not an effort to avoid transparency, but it is in an effort to reach success on the projects. Commissioner Gervais said the best thing to do is focus on the policy changes that fix the foundation because that helps economic development in Maine.

Sen. Davis was concerned that the "Tourism" section of the material received from the Commissioner did not include things like hunting, fishing, snowmobiling or skiing that are near and dear to his heart. He also did not see any mention of snowmobiling or skiing that are all the things offered in his area, and in many other areas in Maine. He asked how much input DECD has in the publications from the Tourism Bureau and are they going to be reviewed at some point in time. Commissioner Gervais believes a step forward has been taken in this area. He said there was a recent report just completed on hunting and fishing by the Office of Tourism in conjunction with IF&W. He said the report was instructive and points to where they need to focus in order to gain additional business.

Sen. Johnson said he did not see included in the information from the Commissioner an economic analysis that would aid understanding of Maine's strengths and the underpinnings of what makes those sectors of the economy work. Commissioner Gervais said part of what Sen. Johnson refers to is in the June evaluation report from the independent consultant. That report is available on DECD's website.

The members of the GOC thanked Commissioner Gervais for his presentation and for answering the Committee's questions.

Director Ashcroft said she has the history on how DECD came to be doing the Comprehensive Economic Development Evaluation and what the goal was of the Department when they laid out the proposal for that. She thought the difference between the tax expenditure reviews OPEGA will be doing and what was originally intended for the DECD independent evaluation is the difference between a micro level evaluation of an individual program and a macro level evaluation of how the entire group of programs is contributing to some larger goal. Director Ashcroft said it started out in DECD that its evaluation was intended to do the latter, to be the macro level evaluation – how is the State doing in comparison to other states, how is the State doing in comparison to its economic development strategy, etc. She said those first reports came out and there was not enough data for the evaluator to be able to conclude on those questions. The Legislature was frustrated because the evaluation and report did not speak to any individual program. In the latest round of evaluation, DECD did try to combine both objectives and looked at individual programs to the degree they could while also doing the macro level evaluation. Director Ashcroft said it is very difficult to do both in one evaluation. She thinks there can be coordination versus duplication and overlap between whatever OPEGA might ultimately get tasked to do and what the Department is required to do by statute. Both types of evaluations are valuable. She thinks Commissioner Gervais was expressing that there are some pieces that come out of the macro level evaluation that you would not want to lose and which OPEGA is not preparing to do as part of its

tax expenditure review process. Director Ashcroft said she would be happy to discuss those nuances with the LCRED Committee and she certainly will be discussing it with the GOC as they figure out how to go forward.

Sen. Johnson said maybe the LCRED Committee will be submitting legislation to re-implement DECD's authority to compel businesses to respond to DECD requests for information. He had not heard anything from Commissioner Gervais to suggest that was the wrong direction to go.

Rep. Mastraccio asked how follow through or follow-up could be legislated. New legislators come in every two years but the point behind the evaluation process is it continues no matter who is sitting in the Legislature. Director Ashcroft said that was a piece they were trying to tackle specifically with the proposal on tax expenditures with the idea if you are going to bother to evaluate it, how do you make sure it gets into the pipeline for consideration afterwards, and said she thinks that has been achieved in the statutory requirements for those reviews. Director Ashcroft said she would agree with Commissioner Gervais that OPEGA has not done any of those evaluations yet so she does not know what kind of success they will have until some tax expenditure reviews are done. She is hopeful that it really is going to produce exactly what the Legislature is looking for, but it has not been tested out yet.

Chair Katz said he now appreciates that what DECD does is not just an evaluation of an individual program but how it fits together with other things they are doing and how important that part of it is. But he said, taking Pine Tree Zones as an example, is Pine Tree Zones so different than other tax expenditures that OPEGA is going to be looking at in the new process that there is a reason to have that program evaluated in some other way by some other people in some other department. Director Ashcroft said as of now, Pine Tree Zones will be evaluated under both because it is a tax expenditure and is on OPEGA's list to review. What ought to happen, depending on the timing of OPEGA's review is that what they gather for information and results can be fed to the independent evaluator's more macro level piece that includes Pine Tree Zones as well. She thinks ultimately you will have to discuss where is the better place to be trying to evaluate individual programs on an individual level and where is the best place to be trying to do a macro level evaluation.

Chair Katz asked if there were other programs that DECD is now evaluating because of statutory requirements that are qualitatively different from the kind of systematic tax evaluation that the Legislature is about to embark on. Director Ashcroft said some of the economic development programs are tax expenditures and so are in this bucket. There are a lot of tax expenditures that OPEGA has been tasked with that have nothing to do with economic development so part of the conversation for her is are we only interested in those tax expenditures for economic development programs or that are supposed to be incentives for something. She said if they are, then there are a lot in the tax expenditure bucket that does not fall into that general purpose and OPEGA is going to be evaluating those regardless because that is the way they are laid out. On the other side, for the non-tax expenditure programs the evaluation process has not been laid out well enough yet for the Legislature to be able to say we know they are meeting this goal, or we see this being successful, or here is how we would tweak it if we wanted to do it differently.

Rep. Sanderson noted the Commissioner indicated that there were only a couple of programs that would be an overlap and asked how many that would be. Director Ashcroft said by her count of the programs that were included in the last DECD evaluation there were 20 of them that were tax expenditures that are captured under the tax expenditure review process. There were 59 total so there would be 39 other economic development programs that would not be part of the tax expenditure review process. Rep. Sanderson said not all the reviews would be done at the same time so perhaps they should keep in mind, that even though there is a duplication, if it turns out that the OPEGA review is becoming more than just a mirror of what a third party independent review is, then maybe the Committee could revisit those pieces. However, on the initial launch of the tax expenditure review process it will give us an opportunity to see if there are differences in the evaluations and where those differences are. Director Ashcroft said a big problem, as has been with tax expenditures, is the idea that it is hard to evaluate something if you do not know what it was shooting for in the first place. She said that is another challenge that DECD's independent evaluators are up against when they try to weave in an evaluation of an individual program, sometimes there is not a lot there to say what were supposed to be the goals and benchmarks. Director Ashcroft hopes with OPEGA's tax expenditure piece they have created a loop

with the Legislature that eventually will get clarity around those things and have something to use as a standard going forward. She said DECD and the independent evaluator may not have the benefit of that same loop if nobody is shepherding the recommendations that are coming out of those evaluations to make sure they get considered.

The Committee thanked Sen. Volk and Rep. Gilbert for participating in this agenda item.

SUMMARY OF THE JULY 17, 2015 GOC MEETING

The Meeting Summary of July 17, 2015 was accepted as written.

NEW BUSINESS

• Presentation of Final Report on Office of Information Technology

Director Ashcroft said the Review was a two year follow-up review of certain areas that fall within the Office of Information Technology (OIT). She wanted to thank the management and staff at OIT, as well as DAFS, for their cooperation throughout the last two years.

Ms. Cherubini presented OPEGA's Report on Office of Information Technology. The Report can be found at <http://legislature.maine.gov/uploads/originals/final-oit-fu-report-for-goc-8-18-15.pdf> or a copy can be obtained by contacting OPEGA. Ms. Cherubini introduced Peter Schablik, a partner with Cohn Reznick, the consultant with OIT expertise that OPEGA retained to assist with the follow-up review. She thanked the management and staff at OIT and DAFS for their cooperation and assistance and to Cohn Reznick for their work conducting the independent analysis of OIT's progress.

GOC member comments and questions included:

Chair Katz asked Ms. Cherubini to further explain the need for business impact analyses and subsequent continuity plans with a layman's example. Ms. Cherubini explained that business impact analyses and business continuity plans are important for making sure state agencies can continue to perform their functions in the event of a disaster, natural or otherwise, and that affected computer systems and technologies agencies rely on can be recovered in a timely manner. This assessment and planning helps set the priorities for recovery, i.e. which systems need to be restored within 24 hours and which can be a lower priority, also planning for how an agency will operate if its physical location and equipment is not available, i.e. in the case of a fire, power outages or other events. Mr. Schablik explained that the business impact analyses should be focused on identifying what an agency needs to run its business and this is the approach OIT is now taking. It is different than doing the analyses from a technical system perspective which is the approach OIT had initially been taking. Mr. Schablik said it is important to get the analyses and contingency plans done because decisions have to be made every day about technology in upgrading servers, new data centers, applications or sunset, and how much money is spent on having redundant systems, etc.

Chair Katz said some of the Report Recommendations are organizational and management related, but some are going to require additional spending. He asked if some of the problems exists because the State is not committing enough resources to OIT. Mr. Schablik thinks one of the challenges is that some of the needs cannot be justified by an individual agency, or a program-by-program, such as spending enough money to have a base level of data analysis. One agency may not be able to make the case for that expenditure, or disaster recovery and business continuity, given their competing priorities. He said something like a broad based data analysis capability may require funding at an overall level rather than how the current funding model is set up and that is where you get into the conversation about needing executive level support. Mr. Schablik said Mr. Smith and his staff at OIT are a talented group who do a lot of great work in providing technology and support, but some of the decisions about how quickly do you want to recover operations and what kind of data capabilities do you want require executive level direction and support to address those.

Rep. Mastraccio said the Report has made it clearer to her as to how it might be possible, for example, for somebody to get an EBT Card replaced forty-seven times and that not be detected and acted on. It sounds like the data issues are within agencies, not just agency-to-agency, and it is a big problem if the State can't rely on the data its getting. Rep. Mastraccio said it is hard for the general public to understand how things like that can happen, but it is easier to understand when you realize that the State's data capabilities are so immature. Mr. Schablik said it is difficult for a small agency or program to make a case to spend money on some of the technology tools.

Rep. Campbell referred to Recommendation 5 regarding resources and said he is also a member of the Environment and Natural Resources Committee and that increased costs for OIT basically blew up that Department's budget. He said the Commissioner was willing to give up positions for enforcement, oversight and guidance at DEP to offset those increases. He also heard from another Commissioner about not having resources to even do the reporting requirements. He said with OIT's budget going higher and higher, and he understands the need, he is concerned about how to balance all the needs and whether the State is going to end up in a place where it just manages data and does not provide a service to citizens. Ms. Cherubini said that is a huge concern and she knows the OIT costs have affected many agency budgets and has been a very contentious issue. That is one of the reasons why OPEGA's recommends that they reassess how they are funded for the core functions, things that are common across agencies, and then see if a change in the funding model is desired. She thinks DAFS, the State Controller and OIT would have to get into the details of those costs and identify those core functions and needs and maybe fund those with separate appropriation for example, and then have add-on costs for other services agencies chose to have.

Rep. Campbell asked, from Ms. Cherubini and Mr. Schablik's perspective, if there was an opportunity to manage what is needed from OIT in order to reduce the costs. Ms. Cherubini said she could not say what opportunities there might be to reduce the costs and noted that all states are struggling with the cost of IT services.

Sen. Diamond said in 2009 OIT initiated and was responsible the transitioning the State Police to a new radio system with other Departments like Transportation also on the new system. He said OIT was woefully inept at that project. Timeframes and deadlines that were given but OIT did not seem to have the ability to manage it. There were millions of dollars at stake in contracts, everything from placing towers around the State to trying to get radio bands, etc. to make it work. It was a nightmare. He said Recommendation 6 in the Report might deal with that problem, but he wasn't sure. He asked Ms. Cherubini and Mr. Schablik if they felt OIT had improved significantly from that time. Ms. Cherubini said OPEGA did not look specifically at the radio project and would have to defer to OIT to see if that is the type of project that now would be using the agile project methodology. She said the idea of going from the old methodology to the agile methodology is that as a project is proceeding there are accomplishments and assessments staged in a more stepped process so there is an opportunity to assess and reassess as it goes forward. That is a way to contain costs and understand what is going on and take an incremental approach to move a project forward so that there are no surprises at the very end.

Sen. Diamond said the difficulty relating to the State Police radio changeover is that OIT at the time did not seem to have the ability to recognize and foresee what most lay people could see. For example, members of the Criminal Justice and Public Safety Committee could see all the little crises, which turned into big crises. He was hoping there was a better mechanism going on now than there was then. Ms. Cherubini said certainly the type of issue brought up by Sen. Diamond would hopefully be addressed more comprehensively with the Report Recommendations. Sen. Diamond said he wanted to publicly get the above on record so one could make reference to it in twenty more years.

Sen. Johnson said he has witnessed, in large organizations, the battle of who owns the data. He said IT has an interest in the data from the perspective of whether the data model is robust, will allow for different kinds of analysis and use of the data in other systems, etc. and the agency may say it's their data. Agencies may rely on IT to protect the integrity of the data ignoring that the accuracy of the data they are entering, or audits

and checks on validity of the information they have put into the system, are things that IT cannot do. He said all of the Report recommendations are important, they are essential disciplines of IT that are not currently fully developed and he was glad to see that they were working on them in different stages. However, he certainly would not like to see a serious business continuity issue or a disaster arise right now or something significant coming down from the federal level that creates a need to alter some of the State's applications that have data architecture issues as that could result in additional costs.

Chair Katz noted there was no discussion in the Report about cyber security and that may be because it is outside the scope of the review, but he asked if Mr. Schablik had a sense about the State's cyber security situation and what changes the State might need to make in order to further secure the State's information, both from attacks and/or to steal information. Mr. Schablik said his firm does a lot of work on cyber security, but that was not the focus of the review so he could not speak to that.

The Committee thanked Ms. Cherubini and Mr. Schablik for the presentation of the OIT Follow-up Report and for answering their questions.

Chair Katz recognized Mr. Smith and welcomed his response to the OIT Report noting that likely today's presentation would be followed by a public hearing at a later date, but would like to afford Mr. Smith the opportunity to respond at this time.

Mr. Smith said OIT has added their response to OPEGA's Report and said they agreed with the findings in the Report. The findings were not surprising to them, that OIT has a lot of challenges, both on the funding side and on helping the agencies find the resources to do the work. He did not want to give any impression that the agencies were not cooperating, they are, but OIT asks a lot of them. Mr. Smith said OIT has to do things like software upgrades required through the industry such as Windows upgrades, that can take six or eight months of agency resources at a cost. It does not necessarily serve to move the organization forward, but the industry is trapped in that because you have to keep your software up-to-date because of cyber concerns, etc.

Mr. Smith referred to the question about cyber security and explained that the Governor has authorized OIT to establish a committee, which they have done. It is the Information Security Protection Committee that brings in resources from the State, the Universities, the National Guard and the Department of Homeland Security to share best practices on how to protect information. He said there is an expense associated with cyber security and he would candidly say Maine is in the middle of the pack on cyber security. Mr. Smith thinks Maine is doing okay in protecting information, but there is a lot more that could be done on preventive measures and defending against attacks. Mr. Smith said the State gets about two million attacks a day and that is common for most states. He noted that the average cost to recover from a breach would be about \$3 million, so it would be a cost avoidance to spend more money on security.

Sen. Gerzofsky said he has been on the Criminal Justice and Public Safety Committee for years and every year that Committee asks OIT what happened to the money that was appropriated for communications (the radio project) so there are departments that can actually talk with others, the State Police especially when there are emergencies, but the Committee has never been able to get responses to a lot of their questions. He was happy to hear cyber security being discussed because thinks it is a major hole in some of the State's public safety needs. Mr. Smith apologized if the Committee had not received the requested information and said to go directly to him and he will get it.

Rep. Sanderson appreciated OIT's responses to the Report Recommendations and said she was pleased to see how much action OIT already has taken, or has planned, even before the Report came out. She asked if there was a timeline for when OIT expects to be able to address the items in the planned stage. Mr. Smith said on some items they do have a timeline and some they do not. He said one of the Recommendations was more Executive level governance and oversight of IT. Mr. Smith said conceptionally they have an idea of the time frame on that. He said on some other things OIT is limited on what they can put out for a timeframe because of other Offices they have to work with, but for the issues under their control, they do have a timeframe.

Chair Katz asked if Mr. Smith could provide the information to the GOC of where OIT is on a time line for items that are in progress or planned. Mr. Smith said he would.

Sen. Johnson referred to Mr. Smith's response on Recommendation 3 – The Administration Should Take Steps to Advance the State's Data Governance and Analytics Capabilities - and asked to what degree the multi-agency data governance committee members are responsible for, and able to represent, their departments with regard to responsibility for the data, maintenance of the data integrity, and use of data. He asked Mr. Smith if the Committee was just formed recently and was formed in reaction to the Report findings. What OIT has done, together with the Office of Program Management, is to bring together all the agencies and begin to talk about how we build a road map to data sharing. As was mentioned earlier, OIT needs to own the data security and governance, the agencies themselves will work on how will they share data amongst agencies. He said OIT is facilitator on that but he did not think OIT was in a position to dictate it. Mr. Smith said they are trying to put together a facility to make it easier for organizations to share data. He said agencies are trapped in the past on the data because there is data stored in different mediums, programs and data bases that in some ways make it hard for agencies to share data so the State has to solve that problem as they go forward.

Sen. Johnson said he would like further information about the charges of the Data Governance Committee and the working group on the data integrity inventory to be provided to the GOC at the next meeting. Mr. Smith said he would do that.

Chair Katz asked if Mr. Smith had any comments regarding the need to reconsider the funding model for some OIT functions. Mr. Smith said that even prior to OPEGA's review, OIT had submitted something to the Governor's Office and the Commissioner of DAFS about how they could look at OIT's expenses differently and maybe have enterprise funding. For example, if an agency wants to build something but they only have "x" amount of money and if there was a little bit more money to put to it, it could be built in a way so that information would be able to be shared. He said OIT has no enterprise fund for things like cyber security or disaster recovery so OIT has proposed a model that tries to segregate things they have to do to be a functioning organization from the variable costs of agency "x" that needs to build up a particular program.

The Committee thanked Mr. Smith for attending the meeting.

Chair Katz asked if there was objection to moving to the GOC Consideration of New Request for OPEGA Review of Certain Matters Related to the World Acadian Congress. Hearing none the Committee moved to that agenda item.

- **GOC Consideration of New Request for OPEGA Review of Certain Matters Related to the World Acadian Congress**

Director Ashcroft said two individual requests had been received for an OPEGA review of certain matters related to the World Acadian Congress. One request was from Rep. R. Martin and Rep. Saucier and the other from Rep. Cooper relating to what came out in the press about actions on the part of the Governor that led to the resignation of the Director of an organization. Director Ashcroft said she would prefer not to expand OPEGA's current review on Good Will – Hinckley. It would be her preference for the GOC to deal with the request as a separate project for OPEGA and to potentially wait until OPEGA has reported on results of the Good Will – Hinckley review to decide what they want to do about the requests. That report will be presented on September 8th.

Chair Katz asked if the members of the GOC were acceptable to deferring any discussion of the review of Certain Matters Related to the World Acadian Congress until the September 8th meeting at the earliest.

Sen. Diamond said he would not expect the GOC necessarily needed to try to deal with these requests on September 8th if that is when the report is being presented.

Chair Katz said the GOC will leave the request unassigned and will take the matter up at an appropriate time. The members of the Committee agreed.

The Committee moved to **Report From Director - Staffing.**

Director Ashcroft reported that OPEGA advertised for the two positions for the Tax Expenditure Review assignment that OPEGA is going to have going forward. One was a Senior Analyst position and the other was an Analyst position. She said OPEGA received twenty applicants between both positions and is moving forward selecting those for interviews and hopefully will be concluding the process sometime in September.

Director Ashcroft said unfortunately OPEGA will be losing Wendy Cherubini, Sr. Analyst, who will be leaving OPEGA for another job. Her last day will be August 27th. Director Ashcroft said Ms. Cherubini has been with OPEGA since the start of the Office and has contributed a great deal to its success. Director said she will be focusing on filling that position in October.

Sen. Johnson thanked Ms. Cherubini for all of her years of excellent work and said she will be missed. Chair Katz and other members of the Committee joined in on his comments.

RECESS

Chair Katz recessed the Government Oversight Committee at 11:50 a.m.

RECONVENED

Chair Katz reconvened the GOC meeting at 12:30 p.m.

• Update on Status of Actions at DHHS Division of Licensing and Regulatory Services Regarding Child Care Facilities

Ms. Whitten and Ms. Powell presented DLRS's Report on Status of Strategic Initiatives and Map for 2014-15. (A copy of the Initiatives and Map are attached to the Meeting Summary).

The GOC's comments and questions included:

Sen. Johnson referenced some of the action items Ms. Powell spoke of that were planned for the future and asked if she had a sense of when they will be completed. Ms. Powell said some items have been carried over to their next Strategic Plan which is a twenty-four month plan, but many of them are contingent on each other. For example for DLRS to reach its goal on differential monitoring and being able to have a tablet out in the field that does the algorithm, we first need to get the rules through the full NAPA process so that we have the new rules. She said DLRS was looking at six months to a year before she felt comfortable that they are where she wants them to be, but they have made tremendous and significant progress in the last year.

Sen. Johnson said he also liked that DLRS was trying to unify the rule books for people and that helps avoid confusion and understanding about what they have to do. He wondered if that should be completed prior to the GOC deciding to have OPEGA continue with the review.

Ms. Powell said the MAPA process takes eight to nine months, assuming everything goes along smoothly, because there needs to be a public forum about MAPA and the rules. However, DLRS does have a final internal draft so it plans to enter into the MAPA process within thirty to forty-five days. Based on how that process moves forward with comments from the Attorney General's Office back to DLRS, she would expect to have the rules implemented within nine months. Ms. Whitten said some of the requirements are federal requirements and will have to have statutory changes as well as have them implemented into the Rule.

Rep. Mastraccio referred to the OIT presentation and asked if what DLRS was doing with technology was being done in their own little silo or is it a bigger effort. Ms. Whitten said one of the challenges in moving Children's Licensing off of its current data base is that they are currently using Macwis, which was developed for the Office of Child and Family Services and Child Welfare and Licensing was rolled into that because they were using that system for foster care licensing. Child Care Licensing does need to move out of that data base and into another system. She said within the Division they have moved many other programs over to Agency Licensing Management System (ALMS) which may be the direction that Child Care goes, or it may be something else. They are actively exploring what would be the most cost-effective, as well as timely, transition and from there they would be looking at the field tablets. Both of the projects would include some OIT collaboration.

Sen. Johnson hopes DLRS is working with OIT to ensure the data models used allow for data sharing and integration with other systems in the future. Ms. Whitten said DLRS has done the business process management assessment which created a 105 page document describing what their new system needs from the provider being able to apply on line, and submit a fee on line all the way through licensing action.

Rep. Sanderson asked if the programs DLRS is looking at are off the shelf programs that will serve their needs and will interface with what the State already has in place, but that also provide the flexibility for additions that may be needed. Ms. Powell said DLRS was looking at ALMS and have worked with OIT regarding the program aspect. ALMS is a program that is also used by the Professional Regulation Licensing Board and the State Fire Marshall's Office and that is an office DLRS interfaces with regularly. She said ALMS is an off the shelf program that can be modified according to the individual program needs. Ms. Powell said, as previously stated by Ms. Whitten, the Department has not committed one hundred percent to ALMS. They are looking at it very closely and will also look at what else may be out there. They are also working closely with Child and Family Services around what they are doing with their OIT initiatives.

Chair Kruger asked how DLRS triages those complaints when they received an unlicensed facility because they have a lot less information about the unlicensed facility. Ms. Whitten said DLRS's out of home investigation team has the statutory authority to investigate when there are allegations of child abuse and neglect in a program that is subject to licensure. In Maine, you can care for two children without needing a certificate to be a family care provider. The complaints that are received about either abuse, neglect or something else in unlicensed homes, or a complaint that they are operating illegally are triaged the same as all their other complaints. The complaints are assigned the same as those for a licensed facilities and if it meets the threshold for child abuse and neglect it is assigned to an out-of-home investigation team. If it is more low level like operating without a license, it is sent to the licensing specialist who covers that area. Ms. Whitten said the same time frames apply as if it were a licensed program. Chair Kruger clarified that from an enforcement perspective then there is no difference between the licensed and unlicensed facility. Ms. Whitten said there was some difference because when a licensing worker is sent out, they do not have the same right of entry statute behind them for an unlicensed facility as they have when they license a program so the person could refuse to allow the licensing specialist to enter their home or answer questions. She said DLRS's Strategic Plan contains a campaign effort to the public, parents, and caregivers about the importance of making sure that their child is in a certified, or licensed child care and targeting those who are operating without a certificate.

Sen. Diamond asked how DLRS planned on enforcing the new law requiring carbon monoxide detectors in all child care facilities. Ms. Whitten thought that would fall within the State's Fire Marshall's Office inspection. Sen. Diamond asked if DLRS inspected the child care facilities for other safety items such smoke detectors, etc. Ms. Whitten said that is done by the State Fire Marshall's Office as well. She said the Department does not issue a license unless the facility has passed a Fire Marshall inspection.

Rep. Mastraccio asked if a foster parent could be a licensed day care provider as well. Ms. Whitten said there is a clear process for that and DLRS works with the Office of Child and Family Services. They do issue dual licenses to some individuals. If they were licensed first as a child care, then the Office of Child and Family Services would need to contact DLRS and if it was the other way they would be reaching out to OCFS to let

them know this person has applied to be a child care provider. DLRS is looking to make sure that the needs of the foster children are met, as well as ensuring the foster child being placed in the home would not potentially cause any risk of harm to those child care children. The provider still needs to stay within capacity and ratio so the foster child would count the same as if it were their own child in the home.

The GOC thanked Ms. Whitten and Ms. Powell for their presentation and for answering their questions.

• **Discussion of Potential GOC Public Inquiry on New Markets Tax Credits Program and the Great Northern Paper/Cate Street Capital Deal**

Director Ashcroft said at the last GOC meeting members were in agreement that there was interest in having the Committee hold a public session to be able to ask questions of folks that had been involved in the deal between the Great Northern Paper and the financing organizations under the New Markets Capital Investment Program. She did some research and thinking about who the Committee might want to have at a meeting and that is the topic of discussion for this meeting. Director Ashcroft said it would be helpful to discuss the scope of the potential inquiry the GOC wants to hold because it could range from how did the original legislation get passed to all the deals that have been done under the Program. She asked if the Committee was intending to limit it to the one scenario.

Chair Katz said all the publicity regarding New Markets Tax Credits Programs (NMTC) and the Great Northern Paper deal happened while legislators were towards the end of the session and committees were very busy with all the bills they were trying to get out of various committees. His sense was that the LCRED Committee heard a bill or two about NMTC, but even though Committee members were very interested, the Committee did not have a chance to step back and figure out what actually happened. Chair Katz thought there ought to be some sort of a forum, where the inquiry was about what happened with the Great Northern deal, how was it that the deal was made and then resulted the way it did. He said it would be a setting where those facts could come out. The GOC would not necessarily be taking any other action, although it could recommend something. It would be to provide that forum to get the facts out. Chair Katz said his view of it was to figure out who the key players are that represent at least the two financiers, the companies that were involved in the deal, and the owner of Cate Street, as well as the representatives from FAME who were involved. He said it would not be to turn it into an adversarial thing, but try to air out what happened. He thinks there would be a public benefit to hearing it at one place and at one time and taking a day at one of the Committee's monthly meetings or an additional day, perhaps in November, and have OPEGA work it up in advance. Chair Katz thought the GOC could provide a real public service by doing that.

Sen. Diamond agreed and said it would be helpful if the GOC could do that because of the inquiries that legislators have received it would help them form a more complete picture of what is happening other than relying on a few sources.

Rep. Sanderson agreed, but said during the process of hearing from the individuals she thinks it would be important to hear from FAME about the whole program, a rundown of what the proposal in the bill was, what was passed, and what that means for not just the Cates Street deal, but other companies that may have utilized that program as well. She thinks it would be important for the GOC to have a broader overview of whether it has been beneficial in other cases and did it just fall short of the mark creating the mess in this one particular deal, or has there been other benefits. Rep. Sanderson said she would insist that the GOC have that kind of information.

Chair Katz thought FAME would be in a position to give the background Rep. Sanderson is looking for.

Sen. Johnson said the fact that the New Markets Tax Credit Program did nothing to protect jobs, or create greater opportunity for that company, or community, is a major failing. He thought, however that changes to the structure in terms of penalties for not meeting specific expectations or requirements for a community benefit agreement that has clear expectations as to what is accomplished and required reporting could be helpful. He said that is currently not part of the New Markets Program itself. Sen. Johnson thought the

Committee needed to get that perspective as well, to consider what are the best remedies to the shortcomings in transparency and accountability around outcomes.

Chair Katz thought Sen. Johnson's suggestion was a worthwhile endeavor, but was well beyond what he was suggesting. He did not see the GOC spending a day getting what happened out on the table and then proposing how the problems will be fixed. He thought that was a larger task than what he was envisioning, but it could lead to that. Initially it would be to get the story out there from the various players to inform the Legislature and public. That might lead to those kinds of legislative changes Sen. Johnson talked about.

Rep. Mastraccio said she was worried about the players and who was going to be talking with the GOC because, having listened in the LCRED Committee, it is all in how it was presented. She thinks that the facts that have been reported about how this deal worked, how much money was invested and how much was actually given back, are pretty clear and have never been really disputed. She thinks that the issue is you are not evaluating New Markets, you are evaluating how it operated in Cates Street. But it is not just Cates Street, there are other similar deals.

Rep. Sanderson said if the GOC is going to get the facts out there then what are we going to do with it. She was more interested in the kinds of things that Sen. Johnson was talking about.

Chair Katz said perhaps the GOC could get stage one done, which is do the very best they can, not to tie up OPEGA staff with another project, but do the best they can in a structured way to get the facts out there and then decide how to continue the discussion from there.

Sen. Gerzofsky said between the federal new tax credits and the State, he has been asked a lot about the fees that are paid by companies that want to participate and said they are fairly heavy. He did not know if it is what members had in mind, but he would like to know more about that and follow the money trail. Some companies might have a huge investment in the fees, but not much of an investment in the upfront capital.

Rep. Gilbert, a member of the LCRED Committee, said the New Markets Program has helped quit a few places, but tax payers got burnt in Millinocket and will continue to be burnt for the next seven years for the tune of about \$33 million. He thinks what most people envisioned as a tax credit program does not apply to out-of-state companies because they do not pay taxes so how can they get a tax credit. He said what is going to happen is Maine Revenue Service has to pay the two out-of-state companies \$33 million. Rep. Gilbert said he was hoping that the GOC would look to see how that all happened, how the New Markets Program works and tie up some of the loopholes to prevent it from happening again.

Rep. Sanderson said Rep. Gilbert said exactly what she was trying to drive at earlier because she knows the New Markets program has been beneficial to certain areas and certain businesses and she would want to make sure that, as the GOC is looking at it, they are not looking at the Program itself as one bad apple because there are benefits. She would like to look at where the Cates Street Capital Deal went wrong and that is where the GOC needs to give individuals a ground to moderate level of understanding and then decide how to move forward to fix it.

Chair Katz asked Director Ashcroft if she had a clear understanding of what the Committee was looking for and to scope out what a day might look like and who the invited players might be. He said Chair Kruger and he would be happy to assist her. Chair Katz said the forum should be in November and, depending on other agenda items on the November meeting, will decide whether it will be at the regular monthly GOC meeting or another day will be set. Other members of the Committee agreed.

- **OPEGA Review of Riverview Psychiatric Center: Notification of Potential Risk that May Warrant GOC Action**

Sen. Katz asked Director Ashcroft to share with the Committee what concerns she has that developed during the course of OPEGA's review of the RPC.

Director Ashcroft said she did not know if what she wanted to share necessarily required any GOC action, but it was something that she felt obligated to make members aware of publicly at the very least.

Director Ashcroft reminded members of the four scope questions OPEGA is pursuing in their review of RPC. She said the concern she is going to speak about today is as a result of work on question 4 which really says are there other areas of concern OPEGA should review that are unaddressed or further identified as a result of efforts of oversight and regulatory bodies currently in progress. Part of OPEGA's work in answering that question has been to monitor what the Department has taken for action in response to the Court Master's review and report that occurred last fall. There were a number of issues raised in that report so OPEGA has been monitoring whether DHHS has been taking corrective action on that. That is one of the things OPEGA has been doing for work on this particular question.

The other thing OPEGA has been doing is to be alert as they work on the other questions as to whether anything is emerging in terms of themes, or issues, that are not covered within the scope of the review and that is what leads her to discuss particular concerns today.

As part of the work on the other questions, OPEGA conducted structured interviews with twenty-six randomly selected direct care workers, meaning nurses, mental health workers, social workers, etc. A couple of themes emerged from those interviews that were not part of the questioning OPEGA was pursuing with them. The primary theme is regarding staffing concerns at RPC. Staffing is being affected by a large number of vacant positions, and an extensive amount of family medical leave in use by a number of employees having doctors' restrictions for light duties, or limitations on overtime that they could work. Staff complained that a result of that combination there was a lot of overtime or mandated hours. It appeared to OPEGA that, potentially a smaller and smaller group of employees was needing to cover more shifts because there are minimum staffing levels that need to be maintained under the Consent Decree. And beyond the minimum levels, there is also concern about what is a safe staffing ratio.

OPEGA did those interviews in May, and the staffing concerns are consistent with a number of unsolicited comments from individuals that OPEGA has continued to receive over the course of the review and that have brought that matter to our attention. The concerns heard are also consistent with what the Court Master's report had identified as some of the staffing challenges. Director Ashcroft said the frequent mention of staffing challenges combined with the consistent theme that OPEGA has also heard about the high acuity levels of patients at RPC presents a level of potential safety risk to staff and patients that she feels obligated to report at this time rather than wait until OPEGA completes its review. OPEGA heard about staff who are overworked and tired dealing with high acuity patients. She knows that the Hospital has been trying to deal with staffing shortages by operating under capacity so they can maintain their minimum staffing levels, but that also means that there are wait lists for people trying to get into Riverview. So potentially there are patients that are out in other environments where that might not be the safest and best place for them as well.

Director Ashcroft said OPEGA has discussed the situation with the Department and inquired whether the upper management level, the Commissioner level at DHHS, was aware of the potential for there to be a smaller and smaller number of folks working all the hours and whether they had anything globally in place to be monitoring that. They are obviously aware that they have staffing shortages and they are trying very hard to fill the vacancies, they know they have a family medical leave issue and are trying to address that, but she did not get the sense that they had developed any metrics for themselves, or assigned anybody responsibility, for tracking exactly whether they have any staff working more hours in particular time frames than might be reasonable and safe.

Director Ashcroft said another theme that emerged was the implementation of the acuity specialist positions that the Legislature approved funding for. RPC is implementing those positions, but that appears to be creating some real tensions between the acuity specialists and the mental health workers in

particular. So while they are still working to do that, and hopefully that will all smooth itself out, presently, or at the time in May when OPEGA did the interviews, OPEGA thought those tensions were also contributing to risk in the environment at Riverview.

Director Ashcroft said the Court Master is still pursuing his work on these matters. He has issued a progress report and his most recent one is in the GOC members' binder. OPEGA has talked with him about it as well. He has confirmed that he also is aware that those are a couple of issues but he is more focused on the waiting list issue in his report than the safety aspect. The Court Master intends for Elizabeth Jones, who did the review last fall, to return in September to do another review and then to proceed with whatever comes out of her findings from there.

Director Ashcroft did not think tasking OPEGA with doing an analysis of the staffing situation at this point might be necessary, given that they have a pretty full plate to get the rest of the review done anyway. She thought potentially the GOC might either have the Department come in and talk to them about the situation or request that the Court Master consider addressing these in his ongoing efforts. Her purpose was to just publicly make the Committee aware of it.

Sen. Gerzofsky asked if the Department had a clear understanding of the issue of staffing. Director Ashcroft said they are well aware of their staffing challenges and thinks they are working to try and fill vacancies. They also seem to be aware of the various issues that were impacting how many staff they could have available. She did not get a sense, however, that they were actively monitoring the risk that was going on in the meantime with regard to a certain portion of employees who are working an unreasonable or unsafe number of hours. To cover three 8 hour shifts in a two day period back-to-back, for example, is that a reasonable thing. Director Ashcroft said that sounds to her like a tired person on the floor potentially dealing with a difficult patient. Staff say that when RPC calls around they have trouble getting people to voluntarily come in for shifts when they need extra people to cover. There were also some allegations that RPC is not meeting the minimum staffing requirements for the Consent Decree. The Department tells us they are in compliance, but when a patient requires one-on-one attention from a worker, what does that mean in terms of the staffing ratio that has to be maintained. In some regards, the staffing arrangements do look like slim coverage. OPEGA did ask for some data on three random weekends and, while it is not an extensive analysis, we saw enough to confirm that there is at least some amount of individuals working multiple shifts in a short time frame.

Rep. Sanderson said at the Chairs' discretion she would suggest that perhaps they invite Jay Harper who is the Director at RPC to come and address these concerns and to also invite Elizabeth Jones. She said RPC staff has been working very hard and it was a huge part of the budgetary process and proposal this year to make sure that every piece of the Elizabeth Jones report from a year ago this fall was implemented and covered in the budget because they do take this serious. Rep. Sanderson said they do take the staffing issues serious and they do take the health, welfare and safety of both clients, and individuals who utilize the Hospital for services, as well as the staff there into consideration. She thinks it would be incredibly beneficial to hear from Mr. Harper about it, and to get Justice Wathen at a meeting to talk about the Consent Decree.

Chair Kruger agreed with Rep. Sanderson and felt there was a little bit of ticking in the background. He was worried for the safety of the employees and patients. He did not want to distract an already stressed out staff by having them come to a GOC meeting and explain what is going on, but on the other hand if our bringing some attention brings some relief to them, he would be one hundred percent for that. Chair Kruger would like to hear from both Ms. Jones and Mr. Harper and anyone else that was deemed necessary.

Sen. Gerzofsky said dating back to before Mr. Harper's time over at Riverview, RPC had exactly the same problem and it has been tried to be addressed over the years, but has never been fully, or partially, resolved. He asked how the GOC, in its oversight responsibility, can get at not only the staffing levels problem but also the culture. Director Ashcroft said, on behalf of the Department, that she does think

they put forward some pretty comprehensive proposals and they feel good about what the Legislature provided, to at least some degree, in terms of staffing. The Court Master indicates in his report that he also feels good about efforts made so far. The Director thinks they are well on their way to try to implement improvements it is not like they are ignoring it. Her concern is that, in the process of trying to get staffed up and trying to get the acuity specialists implemented and all of that, there is a period of time here where there may be some really high risks. She doesn't know if it is a matter of asking the Department to identify someone who can be tracking to make sure that there aren't direct care staff working excessive hours in the meantime, or what other measures they might take to just be monitoring so that they are aware of potential situations like that. It is not something that is going to get cured overnight even with what they are trying to do. The Director said from what they have described to OPEGA, it also seems they are tackling the culture as well and that is going to be a process that takes some time.

Chair Katz said he has been on the Committee for several years and has never heard the Director say anything like that before so he thinks it should be taken seriously.

Rep. Sanderson thinks a lot of the concerns and the volatility that is seen at RPC is due to the increased number of forensic patients versus the civil patient population. From the information she received last session as a member of the HHS Committee, it seems the Department's hands are tied until the Legislature gives them the tools to fix the problem.

Rep. Sanderson said another problem that RPC has this year, and she thought contributed to the staffing issue, was not being able to get the acuity specialists up and running as soon as possible. In the first part of this session, the Legislature authorized funding for the acuity specialist positions, but then dragged its feet and put the budget process on hold. She said most know that the budget doesn't get passed until later, but the actual passage and the different actions and the holding back on continued funding for those acuity specialists left the Department, and the staff at Riverview, in a state of flux because they did not know whether or not there was a good faith effort to continue that funding for these acuity specialists after July 1. That created a problem and is why she thinks the GOC should hear from the folks she listed earlier. She said the Department has been working hard to stabilize the Hospital, they recognize the problems, they want the solutions, but the Legislature has to give them the tools to be able to fix them.

Rep. Mastraccio said that she wanted to know, for example, how many hours they can make somebody work before they really shouldn't be working and is that happening. If they need a body there at that point, what happens, and what is their contingency plan. She had heard that one of the issues was that the acuity specialist positions weren't filled pending the passage of the budget, which seemed to defeat the whole purpose of putting them in the supplemental budget. Rep. Mastraccio understood they were going to be funded and that was something that everybody was working for. She also wanted to know how all of this would be impacted if RPC was decertified and lost that funding.

Director Ashcroft said that was a recent development so she was not sure but that is another good question. RPC has been hiring acuity specialists, those are being implemented, it is just that it is causing some tension between the specialists and the mental health worker population around what the role of each is and who is working where and when and how much.

Chair Katz asked Director Ashcroft if she knew when Elizabeth Jones was returning to Maine. She said she was expected to come back September 22 through the 25th. She was here the same length of time for her review last fall and it was about a month after that that she issued her report.

Chair Katz said that would be the end of October and this sounds like a more urgent problem. He asked if there would be value in asking Ms. Jones to come and speak with the Committee while she was here. Director Ashcroft said her primary question right now is for the Department as to whether they are aware of the risks for safety and how they are monitoring and dealing with staffing challenges. Are they

monitoring whether they have some employees that are really working more than they should to have a safe environment for everyone? Where are they in filling their vacancies to get to a point where they don't have to have waiting lists and they don't have to be working under capacity? Are they finding other challenges that they didn't expect in trying to fill the positions that have now been appropriated?

Sen. Johnson said he was wondering whether, given the rather urgent nature of the potential risky situation here, whether the GOC should be outlining its concerns as a Committee and asking RPC to respond at the next meeting about what they put in place to ensure that the risk is being addressed.

Chair Katz asked Rep. Sanderson if she thought it would be helpful to ask Mr. Harper to come to a meeting to respond. Rep. Sanderson thought it would be appropriate and said others to invite would be Justice Wathen and Elizabeth Jones.

Chair Katz asked if the Committee wanted Director Ashcroft to draft a letter expressing the same concerns she had just raised and ask Mr. Harper and Justice Wathen to come to the next GOC meeting. The other members agreed that was what they wanted to do.

Chair Kruger asked if either of them have the capability to answer questions regarding the decertification. Rep. Sanderson said that maybe Jay Harper may have some information, but thinks that is a more appropriate question for the Commissioner and the Commissioner's staff.

Sen. Johnson agreed that those were two separate questions, but the Committee would need to know whether the decertification and potential for having to refund money to the federal government was going to endanger the progress made toward having a safe environment.

Chair Katz said Mr. Harper and Justice Wathen will be invited to the next meeting.

UNFINISHED BUSINESS

- **Tax Expenditure Review**

- **GOC Consideration of OPEGA's Recommendations for Tax Expenditure Review Classification and Schedule as Required by PL 2015 Chapter 344**

Director Ashcroft said at the last GOC meeting members discussed that by October 1st the GOC, in consultation with the Taxation Committee, is supposed to approve the classification and schedule for tax expenditure reviews. At today's meeting the Committee needed to decide whether they want to move any of the reviews around from what is on the proposed schedules. Director Ashcroft said the same information the GOC received regarding the schedules was forwarded to the Taxation Committee. She has not received any input from any Taxation Committee member.

Director Ashcroft asked if any Committee member had any changes to the proposed classification.

Rep. Sanderson said she read through the information provided regarding tax expenditure reviews and thought OPEGA did a tremendous job of putting the reviews where they needed to be and did not see an area that she thought was in an inappropriate category, needed to be shuffled, or changed around.

Rep. Mastraccio noted that she had previously express her thought that a review of Pine Tree Zones conducted in 2016 or 2017 leave the Legislature plenty of time to make a decision of whether to extend them or not. She was concerned that BETR and BETE were not scheduled for review until 2017 because of the significant amount of money involved. Rep. Mastraccio said she looked at the schedule from two different perspectives. One was which expenditures kept coming up for discussion in the Legislature and second how much money is involved. In the end, she thought all expenditures needed to be reviewed soon and that she had to be patient about it because eventually they will get to the point where everything has

been looked at. She is still concerned about when the New Markets Tax Credit Program will get reviewed because it expires at the end of this year if there is not more money. The LCRED Committee will be getting that discussion back before them and she does not see anything happening with it in Committee unless it gets evaluated in some way. She said that aside, she would not make any changes to the proposed schedules.

Director Ashcroft said even if New Markets were put in 2016, a report would not be issued on it until December of 2016 and would not be teed up for consideration by the Legislature until the first session in 2017. She did not know if that was going to help LCRED with the bills they will be getting next session. Director Ashcroft did think about what could be moved around, but the problem is she was trying to keep blocks of programs with similar goals together. However, it would be possible to swap Jobs and Investment Tax Credit for New Markets Capital Investment Credit on the schedule. New Markets is more focused on the financial investment, but one of the key things that keeps getting talked about is whether it has created any jobs or not. She said the Jobs and Investment Tax Credit is focused on both.

Rep. Mastraccio said she agreed with the Director, but her problem is it is not going to help LCRED next session. The GOC is talking about looking at New Markets in November so wondered if it could be a standalone kind of thing. Obviously with all the questions that there are she does not see it sailing through. Rep. Mastraccio said it is not going to be sufficient to get the information from the people who promote the program. Director Ashcroft asked if Rep. Mastraccio was suggesting putting a special project on OPEGA's regular Work Plan now. Rep. Mastraccio said that is the thing, how much can you really do. She said she wants to hear about New Markets, she wants an evaluation of it and hopes this Legislature does not do anything until it really evaluates it. Maybe knowing it was on the Work Plan for 2016 would be sufficient for people to know that they could bring it back in 2017 for the 128th Legislature.

Sen. Diamond referred to the email he sent regarding a few expenditures he had requested feedback on. The Director did not recall seeing that email and will follow-up.

Chair Katz asked if the Director was looking for guidance at this meeting. Director Ashcroft said the Committee could vote on the proposed categories and schedules at their September 8th meeting, but that would be the deadline for GOC action. She asked if the Committee wanted to move New Markets up in the schedule rather than swapped whole categories because that is the other thing that could be done. The GOC could take the whole category that New Markets is in, Business Incentive for Financial Investment, and move all of those programs to 2016 but then Pine Tree Zones would not be evaluated until 2017.

Rep. Mastraccio wanted to know what other members of the GOC thought because they have been there a lot longer than her and know the issues around BETR and BETE and how they come up at certain points. She said for her she just has to be patient and is okay with the proposed schedules unless there was somebody else who agreed that those are issues that supersede others. Director Ashcroft said that category was put first knowing that Pine Tree Zones had a sunset date. BETR and BETE do come up every single year but there have been some recent tweaks to those programs so it might be better to let those newer tweaks play out to see what effect that might have. So there may be some value to holding off on those anyway.

Director Ashcroft said the GOC and Taxation Committee are going to go through this process every year, because the law calls for it to be revisited every October, so members will always have the opportunity on an annual basis to move things up.

- **Review of OPEGA's Current Work Plan**

- **Discussion on Status of State Lottery Review and Decision on Whether to Suspend**

Director Ashcroft said the State Lottery Review is currently on OPEGA's Work Plan as "In Progress" and that they had not done any work on the Review for a while. So at the last meeting she asked if the

Committee wanted to officially suspend the review. Sen. Burns had noted that he was aware of a study that was currently ongoing with regard to the State Lottery that he thought might be informative. Director Ashcroft is aware that there is a study going on, but does not know what the scope of it is and it was her understanding that it would not be out for another month or two.

Director Ashcroft noted that OPEGA is currently tied up with the Good Will – Hinckley School and the Riverview Psychiatric Center reviews. She also reminded the Committee that OPEGA would be losing one resource that was working on Riverview and it is likely that they will be engaged on that review at least through October. She said it will be at least October or November before OPEGA could start again either on State Lottery, DLRS or any other review.

Chair Kruger asked for clarification on what it would mean to suspend the review. Director Ashcroft said all it does to put a review in suspended status to let the agency know that OPEGA will not be contacting them right away, they will get more of a heads up when OPEGA is ready to re-engage the review.

Chair Kruger was under the impression that some of the proceeds from the Lottery went to Education and notes that it goes to the General Fund and Outdoors Heritage Fund. He asked what ever happened to Education receiving funds. Sen. Diamond said funds were to go to Education and that was how it got passed in the Legislature. He is not sure when that was eased out, but that was the intent. Director Ashcroft said OPEGA had learned it was part of the original purpose that was put forward for the State Lottery, but it was never included in statute that funds should go to Education.

Chair Kruger said he would not mind suspending the State Lottery Review, but would not be comfortable discontinuing it.

Rep. Sanderson asked what would be the time frame for getting Lottery back on the active agenda if the GOC were to suspend it now. Director Ashcroft said that at some point in October OPEGA will be ready to start another project, so the Committee will need to discuss before then which of the projects on OPEGA's Work Plan they would like priority given to. Rep. Sanderson said, given the update the Committee got from DLRS today that they are on an extended timeframe for finishing some of the IT issues, etc., she wondered whether the GOC should keep the Lottery Review "In Progress" and allow DLRS, Child Care Services to remain in suspended status until DLRS gets further down the road.

Sen. Johnson said it might be more valuable to wait and have OPEGA take stock once all the planned action had been completed, but he also thinks it might be helpful and informative to do it now so there is some perspective on whether to say whether there is something else they also need to do or not. Director Ashcroft said that was a good point.

Director Ashcroft said once OPEGA completes Riverview they will be able to start more than one project. She was not sure whether State Lottery was still a priority to this GOC.

Rep. Mastraccio said there are reviews on the OPEGA Work Plan that are more important to her than the Lottery, given the current scope questions for the Lottery, just because she thinks they are more timely.

Director Ashcroft said another method to deal with determining review priorities, that has been done with prior GOCs, would be to take all of the topics that OPEGA is not in progress on and have Committee members rank them. Members agreed and Director Ashcroft will email a matrix to be completed and sent back before the next meeting.

- Discussion and Decision on Proceeding with OPEGA Review of Licensing and Regulation of Child Care Facilities

Director Ashcroft reviewed with the GOC three potential scope questions, should they re-engage on the review, she noted that not all of the questions necessarily needed to be answered depending on the GOC's

preferences. One is to look at to what extent DLRS implemented their strategic plan. As the GOC observed, it would be more of a yes they did this and OPEGA sees evidence that they did it. The other questions are more about what has changed as a result of the actions that have been taken. Beyond the decision of whether or not the GOC wants OPEGA to go forward with the review, at some point the Committee would have a discussion and decision about which, or what, questions they want OPEGA to focus on.

Sen. Johnson thought DLRS was far more important than the Lottery. Both need to happen, but he felt the concerns and issues around making sure children were safe and well cared for were more important. He said it is clear that DLRS's strategic plan has not yet been fully implemented and some of the action items have various dates in the future. Sen. Johnson thinks it is good for the GOC to know exactly what has been completed and what is in the works still.

Rep. Sanderson asked if the DLRS review was a result of what happened at the Sun Shine Day Care. Director Ashcroft said that, as well as other complaints that had been received from current and former employees within the Department. Rep. Sanderson said the DHHS Committee dealt with a large bill in regard to how the Department responds to complaints and the investigation process, etc. of child care centers. She wondered if, before deciding whether the GOC wanted to go through the full review, they should hear from Ken Albert, who DLRS reports to, about what they did and are doing and what they have changed in the process before deciding to send OPEGA in to do a full review.

Director Ashcroft said the GOC does not typically have the agencies come in before the Committee at this stage, but OPEGA could inquire further about whether there are additional changes that resulted from that legislation that have not been captured in the action plan and report back to the Committee. Rep. Sanderson said she did not want OPEGA to do work they do not have to do, so if there is the opportunity to avoid some of that with the ability to give the GOC the sense of peace that there are some things that are being done.

Sen. Johnson said this is something the GOC held off on because DLRS was doing a lot of work on implementing their strategic plan which was intended to bring improvements. The GOC has already been receiving information on what DLRS has done and is doing. As pleasing as it was to hear about some of the things they were working on and have gotten a handle on, he thinks the issues originally raised were very serious and simply because it sounds like it is on the right track does not mean the GOC should just say let's ignore it for another year and a half. He thinks there is value in looking to see if there is anything that has been missed that the Department should consider adjusting their plan to take into account in addressing the original concerns. He thinks that will be of value to them as well as the Legislature.

Director Ashcroft said there were known issues at the outset, and the Department knew them, and the idea to suspend the review was because DLRS was on a fast track to try to make some substantial changes. The idea was to suspend and then to look now, a year later, and see if they have the same issues. OPEGA can review some cases, or do whatever it takes, to give comfort that a year later they do not have the same issues. Hopefully DLRS will continue to do some things, but at some point, if the GOC is interested in knowing whether change has actually resulted, it will require something more than just hearing from the Department about what they have done, assuming the GOC wants an independent, objective assessment of whether the issues still exist.

Rep. Mastraccio agreed with Sen. Johnson and said for some people it is not enough for the Department to say what they are doing. She said the Legislature needs an objective assessment of what they are doing.

Rep. Sanderson said she was not suggesting that OPEGA not do the report, but is suggesting that due to the substantial changes the Department made, and also Legislative changes this year, understanding that may help the GOC decide whether they push to have OPEGA pick the review right back up in November

or do they wait a few months until DLRS has the opportunity to continue putting in more pieces of the strategic plan. She said her suggestion was to bring information to the GOC of exactly what is happening now with the day care providers to ensure that constituents do not go through what those families and children did.

Chair Kruger noted that the Committee was not making a decision at this meeting regarding the DLRS review, but just giving guidance as to how OPEGA will proceed. Director Ashcroft said that was correct and she will be emailing a matrix with reviews on OPEGA's Work Plan and the Committee members will rank them. She will bring that information back to the next meeting and the GOC will have a discussion and decide what the priorities are.

REPORT FROM DIRECTOR

• Status of Current Projects in Progress

Director Ashcroft said OPEGA is in progress with the **State Funding of Good Will – Hinckley School** project and expects to release the final report at the September 8, 2015 GOC meeting. OPEGA is also in progress on **Riverview Psychiatric Center**.

Sen. Diamond asked if OPEGA was having any problems with cooperation from any source on the Good Will-Hinckley review. Director Ashcroft said OPEGA has not had any problems. He asked if the GOC was anticipating a public hearing at some point on the Good Will – Hinckley review. Director Ashcroft said the GOC will be meeting October 15th and that is probably when the public comment period would be held on Good Will – Hinckley.

Rep. Mastraccio said she will not be available from November 14 through the 30 and did not want to miss the November meeting. The GOC will discuss November's meeting at a future meeting or by email.

Sen. Gerzofsky said the Northern New England Passenger Rail Authority was on OPEGA's Work Plan and with all the bills the legislature had during the session about expanding rail service, he asked if that would be included on the matrix the Director will be emailing. She said it would be.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting is scheduled for **September 8, 2015 at 9:00 a.m.**

ADJOURNMENT

Chair Kruger adjourned the Government Oversight Committee meeting at 2:23 p.m.