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REP. CHUCK KRUGER, HOUSE CHAIR

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SEN. DAVID C. BURNS
SEN. PAUL T. DAVIS, SR.
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SEN. STAN GERZOFSKY
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REP. ROBERT S. DUCHESNE
REP. ANNE-MARIE MASTRACCIO
REP. DEBORAH J. SANDERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY

April 10, 2015

Accepted April 24, 2015

CALL TO ORDER

The Chair, Sen. Katz, called the Government Oversight Committee to order at 9:03 a.m. in the Cross Office Building.

ATTENDANCE

Senators: Sen. Katz, Sen. Johnson, Sen. Burns, Sen. Davis and Sen. Gerzofsky
Joining the meeting in progress: Sen. Diamond

Representatives: Rep. Kruger, Rep. Duchesne and Rep. Mastraccio
Joining the meeting in progress: Rep. Campbell and Rep. Sanderson
Absent: Rep. McClellan

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Lucia Nixon, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

Executive Branch Agency Officers and Staff Providing Information to the Committee: Brenda Kielty, FOAA Ombudsman, Attorney General's Office
Tammy Marks, Director, State Archives Records Management Division

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE MARCH 13, 2015 GOC MEETING

The Summary of the March 13, 2014 Government Oversight Committee was accepted as written.

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NEW BUSINESS

• **Presentation of Information Brief on DHHS Workplace Culture and Environment**

Director Ashcroft said in April 2013 the GOC put the DHHS Workplace Culture and Environment review on OPEGA's Work Plan. They did so due to a number of legislators having heard concerns from current and former DHHS employees regarding behaviors, the way they thought they were being treated, and how their opinions were being heard in terms of their day-to-day work and the functions they were performing at DHHS. There were also a number of similar types of concerns that were brought directly to OPEGA. The review is a result of those concerns which raised questions for members of the Committee as to whether the culture and work environment at DHHS was conducive to recruiting, retaining and engaging capable, motivated and knowledgeable employees.

Director Ashcroft said the first phase of an OPEGA review is to do preliminary research to get an understanding of the topic and to assess the degree to which further detailed work by OPEGA might be warranted. At the time the first phase was completed, the GOC suspended the review in order for OPEGA to give priority to the Riverview Psychiatric Center review.

At the February 13, 2015 GOC meeting, the Committee accepted OPEGA's recommendation for not proceeding with further detailed work and instead preparing an Information Brief to report out on OPEGA's work and results to date.

Wendy Cherubini and Lucia Nixon presented the Information Brief. (A copy can be obtained by contacting OPEGA or going to OPEGA's website at <http://legislature.maine.gov/uploads/originals/final-draft-info-brief-dhhscul-4-7-15.pdf>)

Sen. Johnson asked Ms. Cherubini for an example of the disconnect she referred to in what management was trying to communicate versus how DHHS employees heard and perceived that. Ms. Cherubini said somebody might feel that they were being targeted, picked on or retaliated against while management felt they were enforcing a departmental policy such as attendance, coming to work on time and certain behaviors that were department policies in the work place.

Rep. Mastraccio noted in the Information Brief that DHHS wanted to improve accountability and adherence to policies such as attendance, maintaining office hours, and communication with supervisors and asked if that was because these were issues perceived by management as a problem. Ms. Cherubini said it was perceived as unfairness and hostility by employees that OPEGA heard from. Rep. Mastraccio said it seemed that the Commissioner came in, said DHHS was going to do things differently and determined there was a problem about people not going to work on time, not being accountable and not doing their work. Where did that come from and what was the problem that led the Commissioner to say things had to be done differently. Ms. Cherubini said the Commissioner had concerns about a number of different things, including improving accountability of employees on the job. The Commissioner described a concern about the top down management structure and was trying to get a sense of what the real climate was through the surveys. All those disparate views are present in an organization as large as DHHS with over 3,000 employees. The complainants certainly had a perspective that differed somewhat from management's perspective. For example, management might perceive they are holding their employees accountable and make sure that everyone comes to work on time and employees might say they have always been able to do their job with flex hours and not understand why that is changing.

Rep. Duchesne said wherever you have that kind of change there are people who feel they are being put upon or asked to step up more. He asked if there was any metric in the Information Brief that measures that. Ms. Cherubini said there was and when they go through the data in more detail that will be shown. What OPEGA tried to do in the Brief was take what the complainants told them and then triangulate that with other sources of data to assess whether the complaints described reflected the entire Department, were pockets of dissatisfaction

in some offices, or was it more isolated. State employees' union representatives OPEGA spoke with also noted long-standing issues around employee morale, communication and a poor work environment at DHHS that were not something that just recently occurred. They also noted that DHHS' managements' expectation around employee accountability is similar to the way the Bureau of Human Resources described it. Employees are coming to them with concerns, that may or may not become a grievance, that they continue to not feel heard, valued or trusted by management and that inappropriate behavior and bullying by managers towards employees has gotten worse in recent years.

Chair Kruger asked if the spike in terminations in 2014 at the Department of Agriculture was due to their merger with the Department of Conservation. Ms. Nixon said it was and noted that points out that data like terminations can be affected by a lot of factors so if there was a merger or consolidation the numbers change.

Chair Katz noted in Table 4 that in 2014 10% of the workforce left DHHS and asked if it was the same as an attrition rate. Ms. Nixon said that was correct.

Sen. Davis asked if the termination numbers included employees retiring and Ms. Nixon said it did.

Sen. Johnson noted Ms. Nixon's comments about people being fearful of being dismissed, or pushed out of their job, he said he had heard from a number of people who were actually reassigned to other jobs in which their expertise had no application to what they are now charged with doing. He asked if OPEGA had any metric or other information on whether people are being moved from professional responsibilities to clerical ones, etc. Ms. Nixon said the data OPEGA analyzed was termination from employment, people separating at DHHS and did not include information regarding employees being reassigned. Sen. Johnson said that concerns him because of what he hears from people. Ms. Cherubini said it is OPEGA's understanding that there is no data on that statewide of people moving from place-to-place, either within the same department or within State government. She said in fact one of the initiatives that DHHS has taken on in its two largest offices, the Office of Child and Family Services and the Office of Family Independence, is to hire recruitment and retention specialists who are going to do specific employee exit interviews and look at those rates internally to get a sense of what is going on. It is not data the State currently has.

Sen. Johnson's other concern is whether there is enough staffing in some areas to do the jobs well. He gave an example of someone trying to call into the Rockland DHHS Office are on hold for half an hour at best, more often fifty minutes or more, just trying to get to the point where someone answers their call. He said he has experienced this type of thing himself and consistently hears it from constituents. He said that makes it appear that there are far too few people in positions to do the jobs. Ms. Cherubini thought it would show up in the employee climate survey and referred to Table 1 of the Information Brief and in particular the statement "I am Satisfied with: The amount of work required of me." Sen. Johnson asked if there was a way to look at whether the 33% of people in 2014 who did not answer favorable on that question are clustered in various departments where there is inadequate staffing. Ms. Cherubini said that was an excellent question because one of the things OPEGA suggests in opportunities for improvement is to not only continue administering an employee client survey as they did in 2013-2014, but as they move forward to look more granularly at results from specific offices for some of these indicators to see if there are specific problems, or pockets of concern, like Sen. Johnson referred to in a specific area.

Rep. Mastraccio asked whether employee exit interviews DHHS planned to conduct will it include those who move from department to department. Ms. Cherubini assumed it would include people moving from office to office, but did not know whether it would include those moving within the office. Rep. Mastraccio thought it would be interesting to find out if some people are taking the first job available to get into State government and then as various jobs open they are moving on because that was always their plan. She thinks that would be important to know. Ms. Cherubini said a certain amount of turnover is anticipated where you have a high stress job because of the nature of the work. That is a question the GOC may want to ask a representative of DHHS at another meeting.

Sen. Katz asked where OPEGA found best practices on this topic. Ms. Cherubini said OPEGA researched organizational climate and organizational improvement, particularly in the public sector. Public sector employment has slightly different challenges than in the private sector. For example, when an employee does a good job in the private sector they might receive a bonus from their boss. You cannot do that in the public sector. Another thing that happens in the public sector is changing political environment and changing leadership at the top levels that can affect philosophy and direction. Those things are out of an employee's control. OPEGA tried to look at comparables, research specifically around public sector employment and ways to engage employees in those environments. They also reviewed studies done by offices similar to OPEGA in other states.

Sen. Johnson referred to page 13, last bullet "reorganizing the contract management office . . ." and asked if OPEGA could give any indication of what the nature, or the reorganization, was because he has heard from a number of people about concerns that the structure lacked controls and would encourage corrupt influences. Ms. Cherubini said she could not talk about that in detail, but knows they have done a lot of work around reorganizing the process. She said perhaps someone from DHHS could respond to his question.

Chair Katz said Ms. Cherubini talked about particular pockets of employee dissatisfaction with Riverview being one and everyone was aware of the difficulties they are going through. He said with respect to CDC, the GOC went through a review regarding some particular issues there in the last couple of years with regard to document retention, etc. and asked if OPEGA was able to determine if the dissatisfaction there was related to that issue, the publicity and events that surrounded that issue, or whether it was more systematic than that. Ms. Cherubini said OPEGA could not say for sure the cause-effect relationship, but could see a correlation because the CDC satisfaction numbers did decrease between 2013 and 2014 which may reflect the publicity and the other issues going on. Public sector organizations are often in the public eye and that can affect the work place.

Ms. Cherubini and Ms. Nixon thanked the management and staff at DHHS, particularly the Office of Continuous Quality Improvement who disseminated the survey and helped OPEGA with the data. She also thanked the Department of Administration and Financial Services, Bureau of Human Resources, as well as MESA representatives for their cooperation and assistance during the review.

Chair Katz said the GOC will now schedule a public comment period for the Information Brief on DHHS Workplace Culture and Environment. The Committee agreed to have the public comment period at the first GOC meeting in May.

Chair Katz asked if there was objection to taking items out of order. Hearing none he moved to **Unfinished Business, Report Back From Records Retention Working Group.**

UNFINISHED BUSINESS

- **Report Back From Records Retention Working Group – Attorney General's Office and State Archives**

Director Ashcroft said the GOC identified a number of issues from OPEGA's Review of the Healthy Maine Partnerships Contracts and Funding and the public testimony the Committee took from Maine CDC officials. One of the areas of concern was DHHS' understanding and practices with regard to records retention and management. Department representatives said there was a lack of awareness on their part to some degree, but also a lack of guidance around what needed and should be retained for draft working papers. Some working papers they got rid of saying they did not believe they needed to keep anything other than the final product. The GOC had also heard from the Attorney General's FOAA Ombudsman because the ability to comply with FOAA requests was also at issue. The outgrowth of that was a request from the Government Oversight Committee to ask both the AG's Ombudsman and appropriate personal from the Archives to form a working group to present to the GOC recommendations around several items which are included in the GOC's letter to Attorney General

Mills and Secretary of State Dunlap dated July 31, 2014. (A copy of the letter is attached to the Meeting Summary).

Ms. Kielty and Ms. Marks introduced themselves and presented the working group's Records Retention and Management Report to the GOC. (A copy of the Report can be found at <http://legislature.maine.gov/uploads/originals/records-retention-and-management-report-to-goc-2015-4215.pdf>)

Ms. Kielty said she works with freedom of access so it has been very evident to her that the right to public records is entirely dependent upon the preservation and retention of those records. The purpose of FOAA cannot be achieved without adequate retention so the working group wanted to look at the records retention and management throughout the Executive Branch of State government.

Ms. Kielty said the working groups' Report pulled out the issues contained in the GOC's July 31, 2014 letter. She said there were some limitations in their method, understanding that they would not be in the position to conduct public input in a methodical way, although they did consult with subject matter experts and tried to gather as much information as they could. They anticipated that should the GOC wish to move forward on any of the issues, that the appropriate forum for that input would be from the GOC.

Ms. Kielty said the Records Retention and Management Report has been referred to the Right to Know Advisory Committee, but because they do not meet during session, they have not had an opportunity to review the Report as a group. She noted that there may be information from the Right to Know Advisory Committee that would be relevant for the GOC's consideration.

Ms. Kielty said the State does have a legal framework that governs how records retention is structured within State government under the Archives and Records Management statutes and rules. She noted it is important to realize that there is a legal structure that sets out how records management should be happening for State agencies and it is a comprehensive scheme that is in place. When you are looking at a records management program, you are really trying to see what happens from the creation of a document all the way through disposition. Along with the scheme that is set forth in the statutes and rules, Archives is available to provide guidance, support and oversight. The State agencies are required under the rules and statute to establish and maintain a records management program. A program that is going to go from the creation of the record all the way through the disposition. A records management program would have key elements in it. There would be an organizational structure, clear policies and procedures so employees know what their responsibilities are, training and the agency oversight compliance to assure that there is accountability. Employees have a responsibility to perform their record keeping activities in accordance with their agency program.

Chair Kruger referred to the incident at CDC of shredding documents that were later determined, or said to be, early drafts of a critical spreadsheet. He said he could not find in the Report it answered the question of destroying documents that are superseded by another document, or the need to keep every note on every document. Ms. Kielty said that remains a thorny question and when they get into the recommendations on updated guidance you will see that it is not easily answered because the definition of draft is so broad. You are trying to create a records retention schedule for so many different kinds of documents and the guidance is inadequate. In order to create the proper guidance certain things have to be in place and those things are not in place right now. She said the working group has not solved that question and one of the recommendations they are bringing to the GOC is for a next step forward to that guidance.

Chair Katz asked if the basic statutory scheme in place now was adequate from Ms. Kielty's perspective. She said yes, except the working group is going to recommend one amendment.

Ms. Kielty said the difficulty with the question on retaining drafts is that many kinds of documents could be captured in the definition of "draft". It is difficult to say a draft should have a particular retention period. The guidance that exists on drafts is inadequate and is inconsistent and the issue has not been addressed adequately to give employees enough guidance to make a decision on a particular piece of paper. The working group agrees that needs to be improved. She said the retention period of a document is not an arbitrary number, but is

based on a value criteria analysis. Any document should be assessed, appraised and determined by records management for its value and then a retention period would be assigned based on the value. Any draft or any document, has to be looked at from its administrative, fiscal, legal and historical value. Based on that analysis a retention period is assigned to the document. A document that has no historical value, has very limited administrative use and no other requirements are attaching to it, could be a public record, but it could have no retention. Ms. Kielty said that surprises people, especially anyone who is trying to access public records through FOAA because she thinks the assumption is that if it is a public record it must have value and you must be saving it. She said you have to take another step from there and although it may be a public document under FOAA, under Records Management, it may have no retention period. Even drafts could fall under that category where they should be retained forever because they document important policy decisions. Ms. Kielty thinks of it as do the documents express the deliberative process, do they help people understand how the decision makers got to the decision they made. She said it could be a document that has no lasting value, is transient and has no value even though it is a public record, and it would not have to be retained.

Chair Kruger asked if employees were going to have a role in assigning the record retention value. He said an employee, at any agency, could be under the gun because they have to produce a report, but other people have to review and comment on it and then there are 4 or 5 drafts. Does the employee who is rushing to pull all the information together for the report also have to decide if the drafts should be retained? Ms. Kielty said in the ideal circumstance the employee is going to have resources available and the first resource is that they have been trained, that they have a current retention schedule that has records series that address the kinds of records that they are creating and the employee will know how to access that retention schedule. The employee will understand that what they are creating falls in this retention schedule and the schedule tells them how long, or if at all, they have to save it. They are also going to have a records officer, who has been provided training and resources directly to them, who is in their office and is well versed in records retention and management. Ms. Kielty said hopefully they would be able to go a step higher than that within their own organization to potentially get an answer to a hard question. She said Archives would be available to take a question regarding whether a document needs to be saved. If that type of document had not been addressed or included in a series, then she hoped that employee would go to their records officer to let them know the retention schedule was not adequately addressing the documents being produced in the ordinary course of business. If anyone was in doubt and did not have the answers to those questions, save the document until you get the answers. Ms. Kielty said the problem is the retention schedules are not up to date, the records officers may not be identifiable to employees, the guidance has not been adequate and may be the training has not happened.

Ms. Kielty said there are a few places where there is some guidance on drafts and Archives has referred to the National Archives and Records Administration (NARA) on their guidance, but it has not gone any further than that. The problem is the schedules do not adequately reflect the question of draft documents. Archives has agreed that it would be good to have regular updates, directives and more frequent guidance on all topics having to do with records management. They are planning on instituting a regular directive to address specific issues that come up and to try to build the communication and knowledge base across State agencies. She said in terms of dealing with the draft document question, it is really going to have to be reflected in the retention schedules. Each agency has a schedule and then there is a general schedule that applies across the agencies to common records. When an employee is producing a document and wants to know how long they should save a particular document the answer needs to be in the retention schedule. Ms. Kielty said the working group is recommending a stake holder group that has a good representation from the agencies to work with Archives to look at the above issue in all the schedules across the State agencies and come up with proposed amendments to those schedules that will reflect that need.

Sen. Johnson said obviously there is inadequate framework in the departments for employees to apply document retention appraisals. He noted that Ms. Kielty talked about schedules and series and asked if she could explain what that meant. Ms. Kielty referred to the records retention schedules beginning on page 10 of the Records Retention and Management Report.

Ms. Kielty said in statute the schedules are established in consultation with the heads of the State agencies. Each State agency is required to formulate retention schedules and they are required to do it for all of the

records in their custody. She noted that this is where you would get to groups of records that have been scheduled and unscheduled. Under the legal scheme there should not be any unscheduled records. There should be a continuous process of amending schedules to address any new records or changes in business practices that may change the records that get produced, or the proliferation of electronic records, and the different ways that those are now being produced. The head of the agencies are responsible for the records management program.

Ms. Kielty said there are three types of schedules. First, the general schedules apply to kinds of records every agency would have, including Freedom of Access Act requests which are required to be kept for a year. The general schedules also have other types of records relating to personnel for instance, that would be across all agencies. Second, each state agency is required to create its own schedule. General schedule applies to all, agency schedule is just for their particular agency and the kinds of records that agency is producing. Ms. Kielty said that third there is also a disposition schedule which seems to be an interchangeable term with retention schedule. It causes ambiguity in the rule in a couple of places and she wanted to say that definition of a disposition schedule is the same thing as a retention schedule. You are identifying the record, how long it has to be retained and then sometimes, where it needs to be retained and its disposition.

There is a process for the creation of schedules and Ms. Kielty said that process is important. The way the process should work is that the agency is inventorying their records and then appraising those records based on the four part value criteria. That process is happening within the agency and at that point a draft schedule is being created. Many times it is an amendment to the schedules that already exist, but the inventory occurs, the appraisal occurs within the agency.

Rep. Mastraccio asked if the appraisal was a continuous appraisal, the inventory was always changing, or ongoing. Ms. Kielty said that would be a question that the agencies could answer more specifically in terms of how each agency is dealing with that, but the way the law is structured the inventory is not required to be conducted a certain number of times a year or annually. She said what they hope is that the inventory done at some point in time would reflect the kinds of records that are being created by an agency and then, as business practices change, new technology comes in, or new kinds of documents are being created, that a new inventory would then capture that and be included in the schedule. That would have to occur more than once and then it would have to be reviewed by the people who have the authority to review and approve schedules. Ms. Kielty said what has happened in the past is the proposed schedules would go to Archives and then Archive staff would review it and at that point would raise questions like whether audit requirements apply to particular documents, for example, just to ensure that the agency has looked at all of those requirements. The approval process is where the working group is getting hung up because under the statutory scheme the schedules would go before the Archives Advisory Board and the Archivist for the formal approval and then be sent back to the agency to be implemented within the agency. She said the problem is they have not had a functioning Archives Advisory Board due to seats that have not been filled and expired terms. That created a situation where some schedules are being approved only by the Archivist and some have been on hold for years waiting for the Archives Advisory Board to take them up.

Sen. Johnson asked who made the appointments to the Archives Advisory Board. Ms. Kielty said under the statute it is the Governor. She said it is a problem because the system that is in place is not functioning and there are schedules that have not been approved. When talking about relooking at all the schedules to include retention for draft documents, you do not currently have a way to approve those under the authority as it is set out.

Sen. Johnson asked if a Board member's tenure expired could they serve until a replacement was appointed. Ms. Kielty did not have specific information about that, but it was her understanding that they can continue to sit. Ms. Marks noted that in the Report in Appendix 5 the terms are spelled out for Board members.

Ms. Kielty said Archives is suggesting improvements that would provide the timely review and approval for schedules that are ready and that the Archives Advisory Board composition be changed back to what it was when the Board was first created in 1965. At that time the Board included, not only members who had a

particular interest in history and could represent the archival interest, but also members who could represent the interest of the other appraisal pieces. There was a representative from the Attorney General's Office to represent the legal implications of retention periods and someone from the financial area of State government, perhaps from DAFS or Audit, so those interests could also be represented in the process. They would recommend that there be separate subcommittees because the Archives Advisory Board is also approving local schedules for the municipalities, school boards, counties, water districts, etc. They would also like to ensure that appointments to the Board are timely and that may require that the Secretary of State make the appointments.

Rep. Mastraccio asked where local government got their needed information now if the Archives Advisory Board is not functioning. Ms. Marks said they will submit to Archives what they would like to have changed and Archives takes the schedule to rule making. She noted that sometimes a request goes in front of the Board. Ms. Kielty said under the Archives Rule schedules should be reviewed at least once annually. A full inventory does not have to be conducted under the Rules because there is clear recognition that schedules would never be stationary and that they would be changing on a regular basis. She said as far as they know that has not been happening.

Ms. Kielty said you have to have personnel in an organization who will ensure that the duties and responsibilities are being conducted and the records officers and assistant officers be appointed by the agency head. The working group hopes to see a whole core of records management folks who have special expertise, but under the system it is important to keep in mind that the records management responsibilities are added on to an employee's job description, it is not their only job. Ms. Kielty said without them the system does not work. She noted that by Archives' account half the records officer positions are vacant. People are moving from positions and the assignment is not being changed so where some assignments do exist the employee is actually no longer in the organization. She said there are not enough officers so that, for example, the subunits within DHHS that have very specific types of records may not have a person who really knows exactly what their working with. Archives suggest that, as part of the annual review of the schedules, that a current list of records officers and assistants be provided to Archives. Ms. Kielty said currently Archives is not receiving that information quickly enough so if they are going to act as a conduit for guidance to come through, Archives has to know who the records officer is, or that no one has been assigned. She said Archives has been working on identifying where the gaps are and letting the agencies know where people should be. Ms. Kielty noted that Archives has no enforcement mechanism and suggested that, because one of the duties of the records officer is to be able to handle the records, particularly the records that are being transmitted to Archives, or to access the records that are at Archives, that if a records officer has not been assigned that agency not be allowed to either transmit or collect records from Archives until that happens.

Rep. Mastraccio asked how many of the records officer positions were unfilled. Ms. Marks estimated the number to be about 100.

Sen. Johnson said record retention is a key aspect to government transparency and departments are not meeting their fiscal or legal expectations. He was inclined to think that it should not be Archives who identifies where there are gaps and make recommendations, but someone in the agency should be held responsible, accountable and face penalties for not filling those positions within a timely fashion. He said it was a fundamental failing of governmental responsibility because it is what underlies the ability to comply with FOAA at the very least. It is important to properly maintain records necessary for audit requirements. Ms. Marks said it is Archives' mission to protect and preserve the materials that are given to them and to make the material viewable to the public. What is difficult is they have a responsibility to protect the integrity of the material. She also noted that not having a records officer assigned is a liability to Archives because if somebody from an agency requests information, they will only give the information to whoever has been assigned as the records officer or assistant. Not having adequate appointments goes against what Archives' mission is. They would like to be able to say to an agency that if they do not have a records officer assigned, they will be unable to provide them with the documentation that they are asking for. Sen. Johnson said he was concerned with what the consequences of that might be. He can understand not releasing any information to someone who is not appointed and authorized by the department, but concerned with a department not being allowed to give materials to Archives. He thought

another remedy was needed regarding the importance of assigning existing employees records officers and assistants and perhaps department heads should be held accountable for doing so.

Chair Kruger assumed that when Archives was originally created it did not have all its current responsibilities regarding records retention and asked if over the last 10 years, Archives' funding had been adjusted to help the Office accommodate for the new tasks. Ms. Marks said Archives has less staff now and that has made it very difficult. They have one person who works with the records retention schedules and counting herself, it would be one and a half staff to do that function. Lack of staffing is an issue.

Ms. Kielty said you cannot hold employees to expectations and standards that they have no notice of, or have not been trained adequately for. The working group found that there are no minimum standards for training in the legal scheme, which is different than what is in FOAA. In FOAA it is in statute that public access officers and elected officials are going to have to complete training. Up until now the training has been provided by a single Archives' employee, has been voluntary, and is not systematic. There have been improvements to the Archives' website, and they have been working together with DHHS and OIT to try to create a combined online training that reflects the records management email and the electronic record management and FOAA. The State does not have clear, statewide training standards or a mechanism to ensure that the training is equitably distributed, implemented and then to ensure that it has been done.

Rep. Mastraccio asked what would happen if she were an employee who had a document and wanted to find out what she had to do with it if there was not a records officer, or anybody to ask. Would she ask the supervisor and trust that they know what they were talking about and would she be held responsible if she received the wrong information. Ms. Kielty said you would probably go to someone with a similar job and ask how they dealt with it, although she would consider that inadequate avenue. Archives is responsible for ensuring and issuing the standards and the agencies have to implement them and ensure that their personnel have been trained, but there are no statutory requirements of what that training has to be, or any accountability measures if that training does not happen. Archives has worked on updating their website to try to make it easier for employees to get answers to their questions. For State government employees there is also an internet website that is available that includes guidance on email management and FOAA. Resources have been put out there in a variety of places that might help an employee, but it is not enough.

Sen. Johnson wondered whether training for records management and how well those records management plans have been followed should be required to be reported to a committee of oversight along with Archives' comments. He said that would make it visible as to whether the department was doing the job that they need to do. Ms. Kielty said that would need to be something that was phased in. She noted that there has been some training, but it is not comprehensive and it is not enough to provide the basis for performance expectations. If you wanted a requirement that every employee be required to be trained in records management as a part of their performance evaluation, you would need to be leaning on an excellent training program. In order to do that, Archives and the agencies would have to be working together.

Rep. Duchesne said there is a lot of discussion about the accuracy of the record keeping and how to get that done right, but they have not talked about how to do it efficiently and economically. He asked if that conversation was going on at the same time. Ms. Kielty said it is a huge issue because of the volume of records and the different kinds of electronic records that are being produced. She thinks they are at a transitional period. You still have lots of paper records and the laws and FOAA were written in the era of paper records but now you have to move into the world of electronic records and expecting personnel to be able to handle all of that. Ms. Kielty said without technology to assist, there will continue to be a gap.

Rep. Duchesne could think of departments where they have full-time people handling FOAA requests just because the retrieval and the dissemination of the documents can be lengthy. He said that needs to be more efficient and economical. Ms. Kielty said if the decision was to put resources forward trying to create positions for records officers and managers that should be something thought about. She said you also need to think about the systems that could potentially be put in place that would automatically archive and assign retention to certain kinds of documents and trigger destruction electronically, but those systems are expensive. The State

has a disaster recovery system that has nothing to do with retention schedules, so does not help if you are trying to manage the records. There are technologies out there and she knows that OIT has been looking at that kind of thing, but again, that is a resource issue. She said what can be done now is to make sure people understand how to manage the records they are creating early in the process. Departments could be a lot more efficient in responses to FOAA if records that should have been destroyed were and records being retained are better organized.

Ms. Kielty referred the Committee to the list of recommendations on page 17 of the Report regarding training and individual accountability. The working group would suggest that records management should be a required topic as soon as people come into State government. They should be made aware there is a level of accountability that goes beyond the private sector and that the management of State records is a required responsibility. She also pointed out that the working group was not able to formulate recommendations relevant to performance expectations just because the training is not adequate to support putting those expectations in place. However, if you looked at it over time one of the strategic pieces that would need to be in place in order to get it all functioning to an accessible level would be setting performance expectation as a measure of accountability so that an employee would know, and be reviewed, on their ability to manage the records in their possession and receive feedback on that. It is not that they do not think that is important, but without notice and training, it cannot be put in place.

The final piece is oversight and compliance and Ms. Kielty said the statute and rule provide a great framework for it. There is a requirement that agencies, as part of their program, put in effective internal controls over the creation, maintenance, use and disposition of the records. There are controls in place over the life cycle of the record to ensure that they are complying. Those mechanisms can be as simple as having a records officer and providing training, but it could be more specific with checks and balances to ensure that duties are being reviewed. There is a whole menu of potential controls that could be in place.

Sen. Johnson thought you could have a measure of whether the schedules are sufficient, the inventory accurate and whether the training worked if every employee were asked whether he/she handles records for which he/she has no idea what the correct retention schedule is. Ms. Marks said last year Archives sent out a survey to agency heads asking those types of questions – do you know who your records officer is, do you know what your schedules are and questions relating to what Sen. Johnson referred to. Of the 20 to 25 surveys sent out, they received 3 responses back. Ms. Kielty said that mechanism is used on the federal level annually. An assessment is sent out with very specific questions about the implementation of the records program to each agency and then those numbers and data are collected, analyzed and recommendations are made for improvement and identifying risk areas. Sen. Johnson thought the State should have that as a mandatory annual requirement as well. Ms. Kielty said there is a provision in the rules for Archives to conduct an inspection for compliance and effectiveness. It is contemplated in the rules that part of the oversight and compliance would involve that kind of assessment and also that the agency itself would be reviewing the programs and identifying weaknesses and working to improve them.

Chair Katz noted another issue regarding records is how they are organized once they are kept so that when a FOAA request is made it can be responded to quickly. He recognized that might be beyond the scope of what the group has been working on, but asked if there was a sense of whether the records that were being kept in various departments are organized in such a way FOAA requests can be efficiently and economically responded to. Ms. Marks said Archives ran a report on what is currently out there for record retention by agency and the largest number of schedules were created in the 1970's. She said the 1970's and 1980's are the schedules that employees are currently working from and she did not think that agencies are now doing business the way they did back in the 1980's. Sen. Katz noted that the schedules tell you what to keep, but if you keep every document and put it in a cardboard box as it is created, you now have all the documents you are supposed to keep, but they are mixed up with different subjects, areas, etc. Ms. Marks said on Archives' website there is a file plan that walks somebody through how to gather the material and how to best file the material so that they can go to it by year, by subject, etc. He asked if she had an idea of the compliance rate with Archives' suggestion. She did not know, but would guess it was not being followed.

Ms. Kielty said they are trying to make progress with the email management across State government and recognized the work of Eric Stout from the Office of Information Technology who has been desk side with many employees to help them learn how to archive and manage their emails. She said that is one of the biggest problems and information is being provided through the intranet site to give those basic skills for organizing email with the intent that records that can be destroyed pursuant to Schedule are destroyed. The longer you hold on to them the more of a liability they are. Under FOAA if you have them you have to provide them even if they could have been destroyed years ago. They are looking at making sure people have a minimal level of skill if they should be asked to search their email, they should be able to say it ought to take this long for this number of key word searches because you should have organized to a certain extent.

Ms. Kielty hoped that the outcome of the review and inspections would be that the agencies are developing performance goals and some measures. Archives, through their inspections, should be making recommendations specific to an agency and the agency should be providing for the continued analysis because it is not a static program. The working group had a list of recommendations in their report for the performance goals and measures and oversight functions. She said inspections have not been occurring, and they do not know if the agencies are conducting internal reviews, developing performance measures or goals. The absence of that information is a limitation of the Report.

Ms. Kielty noted that the GOC had requested guidance for the cost of a FOAA request. The Right-to-Know Advisory Committee has looked at that question in the past. The working group's recommendation is that if the GOC wants more information in that area the Advisory Committee would be better positioned to review the question because of their prior history with it. Also you should keep in mind that the theme under FOAA is balancing a couple of things. First, make it easy to make a request, but don't make it free. There is a cost associated with it and there were policy decisions about how that cost was going to be calculated. It would be a fairly fundamental change to FOAA if they were going to change the way the fee assessment is done. She said there are states that do not charge by the hour, there are states that charge the full salary equivalent for the person who is doing the searching. State government has a capped \$15 fee. Ms. Kielty would suggest that the Right-to-Know Advisory Committee could look at that for the GOC.

Rep. Campbell asked if Ms. Kielty could elaborate on the \$15 fee for a FOAA request. She said there is an hourly fee after the first hour. The first hour is always free and each hour afterwards for conducting the activities that an agency is responsible for searching, compiling, reviewing and redacting and preparing the responsive records for the requestors. Agencies may also charge a fee for copies and can charge their actual expenses for things like mailing or converting a record.

Chair Katz said the GOC would like to have Ms. Kielty and Ms. Marks come back for another meeting after members had the opportunity to review the working groups Records Retention and Management Report. The Committee thanked them for their Report presentation and for answering their questions.

NEW BUSINESS con't

• Potential Revisions to GOC Rules

The GOC adopted their Committee Rules for the 127th Legislature at their February 13, 2015 meeting. Director Ashcroft said there was an open question at that time as to whether there were going to be changes to the Joint Rules regarding voting if a legislator was not present when a Committee vote was taken. She said the current status of that is that there was a change to the Joint Rules proposed related to voting. It has been adopted in the Senate, but has not yet been voted on in the House.

While the Director was tracking the voting issue she learned that one thing not being done for the GOC over the years was making sure that the Committee's Rules were getting revised to stay consistent with the model rules for all the joint standing committees. She was not previously aware of the changes that had been made to those model rules and so has recently done a cross-check of the GOC rules against the current model rules. The

document in the GOC notebooks show the revisions for the GOC's consideration in order to make GOC rules consistent with those for other committees.

Chair Kruger asked if the House and Senate adopt the Rule changes could the GOC then amend their Rules. Director Ashcroft said committee rules are supposed to reflect the Joint Rules which are typically expressed through the model committee rules that the GOC would be trying to be in alignment with. It is not that the House and Senate are adopting all the committee rules, but are adopting changes to the Joint Rules as a whole which then should filter into the various committee rules.

Chair Kruger asked if Rule C. (1) could be changed so members could consume beverages other than just water during meetings. Rep. Mastraccio noted that the LCRED Committee changed its Committee Rules to allow members to consume other beverages.

Director Ashcroft said the GOC is different from the Joint Standing Committees since statute gives the Committee the authority to adopt their rules. Other Joint Standing Committees that want to make changes to their Rules that are different than the model rules, have to have those changes approved by the Presiding Officers. She thinks it is important for GOC to stay as consistent with the model rules as appropriate, however. Sen. Diamond noted that the GOC has the authority to suspend the Rules for any particular action. Director Ashcroft said she would have to ask someone with more knowledge regarding protocol to say for certain, but that would be her reading of the statute.

The members of the Committee will review the changes noted to the Rules and will discuss what action they want to take at their next meeting.

UNFINISHED BUSINESS

- **Status of Other Actions Related to OPEGA Report on Healthy Maine Partnerships**

Director Ashcroft wanted to bring the GOC up-to-date on the things that were still outstanding, or in progress, in terms of actions the GOC had taken with regard to the Healthy Maine Partnerships Report.

Earlier in the meeting the Committee had a report back on records retention which was one of the items. Other actions are:

- LD 6 – Resolve, To Implement Recommendations of the Government Oversight Committee To Strengthen the Ethics Practices and Procedures for Executive Branch Employees. The Resolve did get reported out of Committee on a divided report with the majority ought to pass as amended. The amendment was the addition of an appropriation provision for the fiscal note that was developed. It has been on the House Calendar and she expects it to be taken up by the House during the coming week.

Chair Katz referred to the Fiscal Note and said the issue is a significant Fiscal Note has been assigned for the implementation of LD 6 and the legislators who worked on the matter find the amount surprising. They will work together to see if there was some misunderstanding about the scope of the bill because the funding for a half a million dollar Fiscal Note is unlikely to happen.

Sen. Johnson noted that the settlement in the recent case in the courts regarding Maine CDC the combined award amounts were about \$300,000. That situation occurred because of questionable ethical decisions. All you need is another one of those awards to make the amount in the Fiscal Note well worth the investment. His other observation was that the subject is something that State government is responsible for doing and the LD fixes it so the State will be doing it right. He has a problem with not implementing something that is a core expectation of State government simply because they have been doing such a bad job and do not have the practices and staffing in place that they want. To say a half a million dollars is needed to fix the situation, he said that is a serious problem.

What Director Ashcroft understood from DAFS' legislative liaison regarding the Fiscal Note was that there are initially 8 positions for about the first year and a half of work on the initiative required by the bill. Three of those are temporary positions that are meant to assist in putting together all the pieces that are going to be needed for training, creating materials and developing the consolidated code of ethics, and getting all the pieces in place. The 5 permanent positions would then be continuing on and those positions would be the ones responsible for training employees, providing the guidance when employees have questions, and for accepting the reports of potential violations and investigating those potential violations. She said if her understanding is correct, that the model they are basing it on would be to have the function somewhat centralized rather than have ethics officers in every agency and that is the reason for the 5 positions. She does not know how DAFS determined that 5 are what would be necessary to do that.

Chair Katz said that Chair Kruger and he planned to talk to their colleagues about the Fiscal Note on LD 6 before it moves forward.

- LR 1988 – An Act to Implement Recommendation of the Government Oversight Committee to Clarify That Competitive Bid Provisions Apply to Grant Awards. Director Ashcroft said LR 1988 is from the Revisor's Office. She wanted the GOC to review it before she gave the go ahead to the Revisor's Office to move it forward.

Chair Katz asked if any members of the Committee had questions or revisions to LR 1988. Seeing no objections from the Committee the Director will ask the Revisor's Office to move forward with LR 1988.

- Response from DAFS on GOC Recommendations to Modify Procurement Rules and Policy on Amendments and Renewals. The Committee sent a letter to DAFS with a couple of recommendations for additional changes to procurement rules to clarify that the rules also applied to grant awards and to ask them to add additional guidance to their procurement policies for renewals and amendments to address the situation that CDC found itself in. Director Ashcroft referred the Committee to Commissioner Rosen's letter responding to the GOC's recommendations.

Director Ashcroft said Commissioner Rosen thinks the recommendations seem reasonable and they will be giving them further serious consideration and will keep OPEGA apprised of whether they are going to move forward with the recommendations and how. OPEGA will report back to the GOC when she hears back from the Commissioner.

Rep. Sanderson asked if the Committee could inquire if there is any timeline on when they may be able to report back. Director Ashcroft said she will ask DAFS that question. Chair Katz asked Director Ashcroft to flag the matter for 3 months out for the GOC to revisit it.

- Status of Actions Taken by DHHS. Director Ashcroft said in the letter Commissioner Mayhew sent in response to the Healthy Maine Partnership Report she laid out 3 particular actions that the Department itself was going to be taking. One was to issue a new request for proposal competitive bid process for the Fiscal Year 16 HMP Contracts. Second is that their legal team was going to be working with Archives to update their records management programs and schedules. Third, that they had a Department wide initiative to establish more performance measures to be used with their various partners, including Healthy Maine Partnerships. Director Ashcroft has asked the Department to provide an update on the status of those various actions. DHHS said they would respond, but did not have enough time to pull all the information together for this meeting. The information will be provided for next GOC meeting.

Rep. Sanderson asked if the GOC could get a copy of either the Statute or the language in CDC which created the Healthy Maine Partnerships. Director Ashcroft will find that information and will direct Rep. Sanderson to it.

Rep. Campbell said the distribution of funds has been a problem to the local organizations that provide services in that they do not get reimbursed for services and services that come from the hierarchy are sporadic and not effective so there is a real problem with the distribution of the funds at the bottom. Director Ashcroft asked if the GOC wanted to ask the Department to address that issue as part of their response back. She thinks DHHS was going to be doing the new RFP, but does not know the status of that. The Committee would like to have the Director ask DHHS for a response to that question.

- **Quasi-Independent Agencies' Annual Reports to Legislature**

- Options for Ensuring Review by Joint Standing Committees

Director Ashcroft reminded Committee members that at a previous meeting they were discussing the fact that there was a reporting requirement for Quasi-Independent Agencies around some financial matters, but there did not seem to be a good system in place to make sure they got reviewed once they were reported. The GOC was exploring options of how to get that done and she referred them to the information in their notebooks regarding those options. The Committee discussed:

1. Introduce legislation to add a review requirement to 5 MRSA §12023.
2. Introduce legislation to require that the annual reports be reviewed as part of the Government Evaluation Act review of the relevant agencies.
3. Introduce legislation to add a review requirement to 5 MRSA §12023 that is a variation on Option #1 in that it requires the JSC to review the reports while reviewing the biennial budget request for the entity or programs administered by the entity and during the GEA reviews, whichever is applicable.

Sen. Johnson liked Option 3 because it gave the Committee the opportunity to review the reports while reviewing the biennial budget request for the entity or programs. Director Ashcroft noted that the GEA reviews were on an eight year cycle so for those that do not have a budget review it might be awhile, but they would be available to be reviewed.

Chair Katz said in reviewing the Summary of Reports Received as of 4-6-15 chart, it appeared there are six agencies that have neither GEA review, nor budget review, and asked when would those agencies ever come up for discussion before any Joint Standing Committee. It appears that they wouldn't. Director Ashcroft said as far as she knows through these current processes they do not.

Rep. Mastraccio did not remember specifically hearing from all the agencies listed on the Summary assigned to the LCRED Committee regarding budgets. She recalled the Loring Development Authority and Midcoast Regional Redevelopment Authority being before LCRED, but not for that purpose.

Rep. Campbell asked where the agencies' funding came from. Director Ashcroft said some agencies have their own outside sources of funding. The Legislature set them up that way and that is why they do not go through a budget review.

Sen. Diamond asked if every appropriate Committee received reports from the agencies listed on the Summary. Director Ashcroft said the Executive Director's Office distributes the reports. He said just as Committees vote out a bill - ought not to pass, ought to pass, etc. - he asked why couldn't each Committee report out that they have read the report and each member be checked off. Director Ashcroft said that would be Option 1. **Committee Review.** By DATE, a joint standing committee of the Legislature receiving the reports required by sub-§2 shall review the reports received for at least the prior year, and gather additional information as necessary from the submitting entities, to assess whether policies and procedures adopted by the governing body in accordance with 5 MRSA §12022, sub-§§3, 4 and 5 are consistent with expectations established in those sub-sections and whether all reported waivers of competitive procurement and reported contributions made are in compliance with the adopted policies and procedures, including proper justification and documentation." Director Ashcroft noted it would be incumbent upon the Committee staff, OPLA or OFPR Analysts, to bring this review responsibility to the

Committee's attention. Whether and how the Committee performed the review and would likely be subject to their workload. Sen. Diamond thinks that the Committee Analysts would make sure that happened.

Motion: The Government Oversight Committee agrees to move forward with Option 1 and introduce legislation to add a review requirement to 5 MRSA §12023, sub- §3. (Motion by Sen. Diamond, second by Rep. Sanderson, Passed unanimous vote, 10-0).

Rep. Mastraccio requested the statutes related to the agencies that are not being reviewed via the budget of GEA and Director Ashcroft will gather that information for the next GOC meeting for members' discussion.

- **Status of Bills of Interest**

Director Ashcroft gave a status update regarding bills of interest.

- LD 18 - Resolve, To Review and Audit the University of Maine System's Finances and Governance Practices – The Education Committee had a Public Hearing and Work Session and voted Ought-Not-To-Pass on the bill, however they did express an intent to send the GOC a letter with regard to the issues that arose around LD 18 and what came out at the Public Hearing. The letter will not be a specific request for an OPEGA review, it will be more asking the GOC to consider the issues that have been brought up around the matter and determine whether an OPEGA review might be warranted. Director Ashcroft did not know whether the sponsor of the bill is intending to submit a formal request for review in conjunction with that or if it will just be the letter from the Education Committee.
- LD 237 – An Act To Address Recommendations From the Report by the Office of Program Evaluation and Government Accountability Regarding the Public Utilities Commission – reported out of the Energy, Utilities and Technology Committee as Ought-To-Pass As Amended. It has been in the House for the first reading and the next step would be for a second reading in the House.

Rep. Mastraccio said LD 237 did go through the House, but there was a roll call vote on it. The vote was 91 to 52 with 8 absences. Chair Katz asked if there was any debate on it. Rep. Duchesne's recollection was that Rep. Fredette said that the LD created something in statute that was not in statute and there may be concern from the second floor about that. Director Ashcroft provided some insight to that because it did come up during the Public Hearing and Work Session on LD 237. The Office of the Public Advocate is unique in that all of the positions in the Public Advocate's Office are established in statute and that is the reason they are seeking to make sure this position is also listed there. She thinks there i be a view that it is not a good practice in general to have positions specified in statute.

- LD 769 - An Act to Reduce Tax Expenditures was a tangential item to OPEGA and is a bill that requires DAFS, DECD and Maine Revenue Services to eliminate any tax expenditure programs that OPEGA has not identified as being for the purpose of job creation. It is a concept draft bill and, other than the work done on the tax expenditure proposal, OPEGA has not come out with any statement about which programs are or are not creating jobs. LD 769 is scheduled for Public Hearing in the Taxation Committee on April 16, 2015 at 1:00 p.m.
- LD 941- An Act To Improve Tax Expenditure Transparency and Accountability is schedule for a Public Hearing on April 16, 2015 at 1:00 p.m. Director Ashcroft will be available to the Taxation Committee on April 16th for both LD 769 and 941 should they have questions about the proposal.

REPORT FROM DIRECTOR

• Status of Projects In Progress

Riverview Psychiatric Center – all of OPEGA's Analysts are working on the review which is in the fieldwork stage. They are still planning to have the review completed by the second quarter of 2015, but that is contingent on being able to, in a timely way, get access to staff for interviews, and files that need to be reviewed.

Office of Information Technology – the Consultant is wrapping up their fieldwork and drafting their report to OPEGA. Their Report is due by the end of April. OPEGA expects to submit a final report on the follow-up review to the GOC at the end of May.

State Lottery has still had no work done on it because the Riverview Psychiatric Center review is taking up all of OPEGA's staff time.

DHHS Licensing and Regulation of Child Care Providers is in suspended status. OPEGA will begin working on this Review in mid-year of 2015.

• Status of OPEGA Budget

Director Ashcroft noted that the Legislative Council's Budget Subcommittee was scheduled to meet on April 15, 2015 and the GOC's letter to the Budget Subcommittee regarding OPEGA's budget will be provided to them then.

Director Ashcroft noted OPEGA was running under its FY15 budget in both the Personnel Services and All Other line. She said with regard to All Other they currently have \$95,000 unspent, but a good amount of that is related to OPEGA's consulting budget and will be used with the rest of the expenditures for the OIT consultant. She reported that just recently OPEGA's main office printer had to be replaced and the Office's secondary printer also stopped working and she is evaluating, considering it is 11 years old, whether to pay the repair costs versus replacing it. All of OPEGA's laptops are due for the five year cycle of being replaced. She does not carry a specific line item for it in the budget for these technology replacements because it is not an annual expense so she works it in as funds are available in various years. The Director wanted the GOC to know that she is considering using a portion or all of the budget under run for FY15 to get those replacements done.

NEXT GOC MEETING DATE

The next Government Oversight Committee meeting was scheduled for April 24, 2015 at 9:00 a.m.

ADJOURNMENT

The Government Oversight Committee was adjourned at 12:02 p.m. (Motion by Sen. Diamond, second by Rep. Campbell, unanimous vote, 9-0).



SEN. CHRISTOPHER K. JOHNSON, SENATE CHAIR
REP. CHUCK KRUGER, HOUSE CHAIR

MEMBERS:

SEN. ROGER J. KATZ
SEN. DAVID C. BURNS
SEN. MARGARET M. CRAVEN
SEN. TROY D. JACKSON
SEN. EDWARD M. YOUNGBLOOD
REP. PAUL T. DAVIS, SR.
REP. ANDREA M. BOLAND
REP. H. DAVID COTTA
REP. LANCE E. HARVELL
REP. MATTHEW J. PETERSON

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

July 31, 2014

Honorable Janet Mills
Attorney General
6 State House Station
Augusta, Maine 04333-0006

Honorable Matthew Dunlap
Secretary of State
148 State House Station
Augusta, Maine 04333-0148

Dear Attorney General Mills and Secretary of State Dunlap:

In the months since the Office of Program Evaluation and Government Accountability released its December 2013 report on Healthy Maine Partnerships' FY13 Contracts and Funding, our committee has been considering potential actions on associated issues with records retention policies and practices at the Maine Center for Disease Control and Prevention, as well as Statewide. Chief Deputy Attorney General Linda Pistner, FOAA Ombudsman Brenda Kielty, Senior Attorney General Phyllis Gardiner and State Archivist David Cheever have provided information and perspective that have helped us to understand where weaknesses exist in the State's records retention and management framework and helped brainstorm possible ideas for improvements. We greatly appreciate their interest and assistance in these matters.

As a result of these discussions, the Government Oversight Committee would like to accept the offer extended by your offices for the FOAA Ombudsman and Director of the State Archives Records Management to convene a working group to develop and/or make specific recommendations to the GOC regarding improvements to the State's Records Retention framework. Specifically, the GOC requests that:

- A. A working group be convened by the FOAA Ombudsman and the Director of Maine State Archives Records Management and include, at a minimum, representatives of the Attorney General's Office, the Office of Information Technology, the Bureau of Human Resources and the Department of Audit.

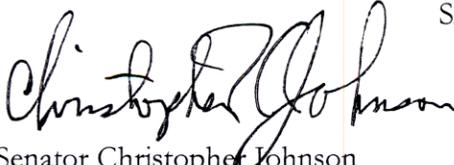
82 State House Station, Room 107 Cross Building
Augusta, Maine 04333-0082
TELEPHONE 207-287-1901 FAX: 207-287-1906

- B. The working group make specific recommendations concerning the following:
- a. improved guidance for agencies on record retention, including specifically the issue of draft documents and the appropriate criteria for determining the extent to which drafts should be retained;
 - b. model policies on record retention;
 - c. training requirements, including additional requirements for supervisors, and a system of accountability to assure that all state employees receive appropriate training on record retention policies, schedules and procedures; and
 - d. establishing, or promoting/enhancing existing, avenues for employees to get consistent and accurate answers to records retention questions.
- C. The working group also make suggestions on how best to implement the following ideas with the goal of ensuring expectations regarding records retention are clear and well understood by all employees and that all employees are accountable for complying with those expectations:
1. All executive branch agencies shall review and update their record retention policies, procedures and schedules consistent with the improved guidance and model policies; train incoming and existing employees and supervisors on those updated record retention policies and procedures (in addition to, or in conjunction with FOAA training); and require staff to review and acknowledge receipt of the State of Maine Policy on Preservation of State Government Records on an annual basis.
 2. Consistent with collective bargaining agreements, civil service law and rule and other applicable law, compliance with record retention policies, procedures and schedules should be included as part of each employee's performance expectations. Employees who fail to fulfil their obligations under applicable record retention policies, procedures and schedules will be subject to disciplinary action, up to and including discharge.
 3. The FOAA Ombudsman's ongoing training of state agency personnel continue to address the importance of record retention, as well as the obligation of each agency to update their record retention schedules, policies and procedures, and to assure that all agency staff receive training on those policies and procedures.
- D. The working group make recommendations on guidelines that should be used by agencies in determining costs for responding to a FOAA such that costs are reasonable, consistent across State government and do not present an unnecessary barrier to FOAA requests.
- E. In developing its recommendations and suggestions, that the working group seek input from the Right to Know Advisory Committee, other State agencies and/or stakeholders as appropriate.
- F. The working group report back to the GOC by February 1, 2015, on the results of its work and include recommendations for any additional steps, including those that may require legislative action.

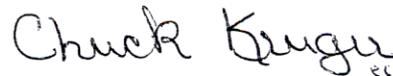
We understand that your offices have very limited staff resources to support this effort and, consequently, there may not be time or resources to involve or seek feedback from a broad stakeholder group, even if the working group feels that would be appropriate. If it seems that the working group's recommendations should be vetted with stakeholders more than you have opportunity to do before February 1st, the GOC can do so through its public consideration of those recommendations.

Please confirm with OPEGA Director Beth Ashcroft that your offices intend to honor this request. Director Ashcroft can also answer any questions you may have.

Sincerely,



Senator Christopher Johnson
Senate Chair



Representative Chuck Kruger
House Chair

Cc: Members of the Government Oversight Committee