



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

MEMBERS:

SEN. LISA KEIM  
SEN. DONNA BAILEY  
SEN. RICHARD BENNETT  
SEN. SUSAN DESCHAMBAULT  
SEN. JEFFREY TIMBERLAKE  
REP. H. SAWIN MILLETT, JR.  
REP. AMY ARATA  
REP. MARK BLIER  
REP. MARGARET O'NEIL  
REP. HOLLY STOVER

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**August 11, 2021**

**Call to Order**

The Chair, Sen. Libby, called the Government Oversight Committee to order at 10:00 a.m. in the Cross Office Building.

**ATTENDANCE**

Senators:	Sen. Libby, Sen. Bailey, Sen. Bennett, Sen. Deschambault and Sen. Timberlake Absent: Sen. Keim
Representatives:	Rep. Arata, Rep. Blier, Rep. Millett and Rep. Stover Absent: Rep. McDonald and Rep. O'Neil
Legislative Officers and Staff:	Lucia Nixon, Director, OPEGA Matthew Kruk, Principal Analyst, OPEGA Amy Gagne, Senior Analyst, OPEGA Ariel Ricci, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA/Clerk, GOC
Legislators:	Sen. Claxton, Sen. Moore, Rep. Meyer, Rep. Craven, Rep. Lemelin and Rep. Terry
Executive Branch Officers And Staff Providing Information to the Committee	Emily Cook, Special Assistant to the Secretary of State Jonathan Wayne, Executive Director, Commission on Governmental Ethics and Election Practices Michael Dunn, Political Committee and Lobbyists Registrar, Commission on Governmental Ethics and Election Practices

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## Introduction of Committee Members

The members of the Committee introduced themselves.

## Summaries of June 25 and July 14, 2021 GOC Meetings

The Summaries of the June 25 and July 14, 2021 Meeting Summaries were accepted as written.

## New Business

### • OPEGA Report on Maine's Citizen Initiative and People's Veto Process

Sen. Libby noted that the GOC received the presentation on OPEGA's Maine's Citizen Initiative and People's Veto Process report at their meeting on June 25, 2021. The Committee's process is to now have a public comment period on that report.

#### - Public Comment Period

Ms. Cook presented Secretary Bellow's testimony on the report. (A copy is attached to the Meeting Summary.)

Mr. Wayne presented his testimony on the report. (A copy is attached to the Meeting Summary.)

Sen. Bennett thinks the technologies available today for tracking expenditures and receipts have improved and asked if Mr. Wayne had thought about the impact of requiring more of a real time approach to disclosures and what the impacts would be in terms of accountability and transparency.

Mr. Wayne said more frequent reports would increase a lot of the work on the Commission and would be challenging in the last 8 weeks before an election, but they could look at adjusting their staff, perhaps get an additional project position. When there is a filing deadline there are many reminders that go out, there are increased questions from the filers and then there is a late filing process where people don't always understand the deadlines. Under the Commissions' statute there is an automatic penalty process and his office has to follow-up with calls or emails right away to get them to file their report. If the Commission moved to more frequent reports, that cycle would be sped up and there would be a lot more work for the Commission to do, but he thinks, with adjustments to their staff, they could do it. Mr. Wayne said he would be happy to talk about it more with Sen. Bennett or anyone else.

Mr. Dunn said a good number of the PACs are backed by professional organizations and have professional individuals who handle the reporting. He thinks that is something they could handle, but they also have a large number of private citizens who are doing this on their own time and are frequently calling him at the last moment because they have run into a problem. He thinks increased reporting could result in an undue burden on them.

Sen. Bennett said he would encourage the Commission to think about more frequent reporting because the world is heading in that direction and a more continuous stream of information might simplify things for people because they are going to have to know what the rules are and follow them. It may end up being less staff time for the Commission because they may have to answer a lot of questions up front. Mr. Wayne said the Commission will think about Sen. Bennett's suggestion.

Sen. Libby asked if there was anyone else in the audience that wished to testify on the report. Noting there was no one else who wanted to testify, the Chair closed the public comment period at 10:26 a.m.

#### - **Committee Work Session**

Sen. Libby said the review for the Maine's Citizen Initiative and People's Veto Process was initiated after the 2017 York County Casino referendum. He thought the folks interested in studying this issue expected to see more cracks in the system and this report suggests that maybe there are just a few tweaks to be made. He would suggest that the Committee, rather than trying to introduce legislation that would go to the Veterans and Legal Affairs (VLA) Committee, which is an option for the GOC to do, that they simply refer this report to the VLA Committee, highlight some of the recommendations that the OPEGA staff have made and suggest the VLA Committee work with the interested parties and decide whether they want to make amendments to the laws governing this process.

**Motion:** That the GOC refer the Maine's Citizen Initiative and People's Veto Process report to the Veterans and Legal Affairs Committee for them to digest the identified opportunities for improvement and submit legislation as they may deem appropriate. (Motion by Rep. Millett, second by Sen. Timberlake, passed by unanimous vote 10-0, 2 members absent.) (Rep. McDonald voted on the motion in accordance with the GOC Rules.)

#### - **Committee Vote on the report**

Director Nixon explained that voting to endorse the report means that members of the Committee find the report credible, objective, sufficiently relevant and complete with regard to what was assigned for work for the report and that the report recommendations are appropriate and reasonable for the issues identified.

**Motion:** That the GOC endorse OPEGA's Report on Maine's Citizen Initiative and People's Veto Process. (Motion by Sen. Bennett, second by Rep. Stover, passed by unanimous vote 10-0, 2 members absent.) (Rep. McDonald voted on the motion in accordance with the GOC Rules.)

#### • **Presentation of OPEGA report on Evaluation of the Maine Seed Capital Tax Credit**

Ms. Ricci presented OPEGA's report on Evaluation of the Maine Seed Capital Tax Credit. She noted the evaluation did not arise as a result of any particular concerns about the program, it is part of the statutory tax review process. In January 2020 the GOC approved the evaluation parameters, which are set out in Appendix A of the report, that sets out the program purpose, intended beneficiaries, evaluation objectives and performance measures. (A copy of the presentation slides is attached to the Meeting Summary.)

Sen. Bennett said, in his view, one of the reasons for the Maine Seed Capital Tax Credit program is to diminish the risk for the investors in an early stage company. He asked if OPEGA did any sort of analytics on how much risks were reduced, or was that data difficult to determine.

Ms. Ricci said OPEGA did not look, in detail, at the investors, they focused on the business component. But, a simplistic answer is that it reduces the risk to the extent of the percentage of the tax credit, currently 40%, previously 50%. OPEGA did hear from an investor and a business where the business ultimately failed, the investors lost the vast majority of their investment, but there was also the opportunity to write off the loss so that is another mechanism that there is some risk mitigation. Sen. Bennett said he would be interested in looking at that going forward.

Sen. Bennett said he noticed in Appendix F there is a helpful matrix of similar programs in other states. One aspect of Maine's program, and not reflected here, is the refundability of the tax credit which he believes started in 2014, or thereabout, and wondered if the other states have a refundable tax credit like Maine has.

Ms. Ricci said the Maine program is not refundable for all investors. It is only refundable for private venture capital funds so for in-state individual investors, it is not refundable and is required to be taken over multiple years. For private venture capital funds, because there are some in state, she thinks the intention was to attract those that are out-of-state who don't have a Maine tax liability to offset, it is refundable. OPEGA did see a lot of variability in other states, both in terms of who they target and whether it is available to individuals or private venture capitals funds, whether it is available to in-state or out-of-state. Some are refundable, some are not refundable. There is a lot of variability there.

Sen. Bennett would like to see that data if Ms. Ricci could provide it because there are two sides to this program and that is the other side. There is the side that benefits the investors and the side that benefits the business and then you hope to have some happy medium. He said, to clarify, we are literally writing checks out of the State Treasury to private venture capital funds, groups of investors in other states, using this program. That side of this program, he thinks, also merits inspection, as well as the business investment benefits.

Sen. Deschambault referred to the 5 eligible business categories under "Program history" and wanted to confirm that was from legislation. Ms. Ricci said that is correct, they are set in statute.

Sen. Deschambault said in every session a film tax credit bill comes up and when Ms. Ricci mentioned the film industry she noted she has been involved with those bills and this is the first time she has had such a great explanation about creating jobs. That is the part of those bills that she never understood and appreciated Ms. Ricci's presentation. Ms. Ricci said the film piece is a small piece of this tax credit, and OPEGA has not yet done an evaluation of the overall statewide approach to film companies.

Sen. Libby referred to the 134 unique businesses participating in the program and that many participate in multiple years, and asked Ms. Ricci if she said she perceived a conflict with the program. Ms. Ricci said the program appears to be designed in that way and often what OPEGA saw when they spoke to businesses is the initial pitch to get investors can be challenging. Many investors may start by investing a small amount to see how it goes and then if the business continues to grow, investors may continue to invest. The same investors may invest more or they may pull in more investors.

Sen. Libby said Ms. Ricci noted that the low end of an investment is \$1,500 and asked if the \$1,500 investor went through the same approval process, and is it for the business or the investor. Ms. Ricci said that investor would go through the same approval process and it would be for both the business and the investor. The business will often first get initial approval about whether they meet the business eligibility. That does not guarantee them any investments. They may never get investment using the program, but if they do, the investor makes an application for an investment in a particular business for the particular amount. It is a two stage process.

Sen. Libby thought it was interesting that OPEGA was able to produce a report of beneficiaries and recalled in the past having had a difficult time doing different tax evaluations in getting that information from the Maine Revenue Services (MRS). He asked if he was recalling that correctly.

Ms. Ricci said he was. She said this program is different because it is administered by the Finance Authority of Maine (FAME) and the program rules actually state that the identity of businesses is in the public domain so there is no confidentiality provision explicitly stated in the rules. OPEGA obtained their information from FAME and had very little to do with MRS for this program. They did not request any confidential tax payer

data so the combination of it being administered by a different agency (FAME) and that agency's rules providing that that information was public, made it a very easy process.

Sen. Libby said he thinks one of the challenges in looking at all of the tax expenditures is understanding who is taking advantage of 4, 5, 6 or 7 tax programs, and noted that some possible follow-up work is trying to understand the mechanism for getting information on a beneficiary more consistent across all the programs.

Ms. Ricci said there is not currently any central record of businesses that may be accessing multiple programs, particularly from multiple state or quasi state agencies. The State has FAME, MTI, DECD and they gather and store their data and information separately.

Sen. Libby noted that Ms. Ricci said that in 2017, 4 out of 10 businesses did not report to FAME and asked if there were penalties for not complying.

Ms. Ricci said the program rules and statute permits FAME to revoke the tax credit certificate from the investor if a business fails to report. FAME has, understandably, not gone down that road because it is penalizing an investor for the actions of a business that they do not have control over. FAME also explained that what they tried to do was to not permit a business to participate in future years in accessing eligible investments if they were not up to date with all of their reports, but OPEGA did not see that being enforced effectively. At the moment it does not appear that there is an effective enforcement mechanism.

Rep. Blier said what stood out to him when reading the report is there is not enough data to really come up with a conclusion of whether this program is meeting the legislative objective. He said giving recommendations on how to fix the program may be premature if we don't have the data necessary to make an objective decision of whether the program is working. He asked if they should ask for more data in order to make further recommendations.

Ms. Ricci thinks, from OPEGA's perspective, changes need to be made to get the data to assess whether the program is meeting the goals and said that may come up a bit more when she talks about the report recommendations. There are changes that can and should be made to the approach for the data that FAME currently takes regardless of what the Legislature does. There are always wider questions of are we collecting the right data and that depends on what the Legislature thinks the program is trying to achieve. There is a combination of things that could be done now and things that need to be thought about a little more for the bigger picture.

Ms. Ricci moved to the recommended legislative actions in her report presentation. She said that during OPEGA's review, FAME was very helpful and is a very responsive agency. They clearly care about the program and its success. Their response letter to OPEGA's review is included in the report. She thanked OPEGA staff who worked on the report saying it was a team effort that included Analysts Kari Hojara and Joel Lee and Senior Analyst Jennifer Henderson.

Rep. Blier noted that Ms. Ricci commented that when it comes to investors and companies reporting, FAME is hesitant to go after investors because of a lack of reporting on the company side and asked if she could explain that statement more.

Ms. Ricci said the statute requires the business to report annually to FAME. The mechanism in statute is if a business does not report FAME may revoke the investor's tax credit certificate. When OPEGA asked FAME about whether they had ever done that FAME said no they have not, they have not wanted to penalize the investor for the noncompliance by the business. The statute currently permits that and if the Legislature wants that to be enforced, that should be made clearer.

Rep. Blier asked what OPEGA's recommendation would be. Ms. Ricci thinks it is more of a matter for FAME to come up with an effective enhancement mechanism. OPEGA does not necessarily get into the detail of implementation. OPEGA's focus is more about recommending an outcome, that there is an effective enforcement mechanism, but it is really a matter for the agency to figure out, dealing with the program in and out, what they think is appropriate and effective. Rep. Blier asked if the business annual report would help with data collection. Ms. Ricci said it absolutely would.

Rep. Blier said FAME is responsible for administering the Seed program. If they are not receiving reports from companies or investors and also not giving reports to the Taxation Committee, he feels FAME is asleep at the wheel when it comes to this particular program. He understands the theory that we don't want to penalize investors, but we need to know if this program is working so thinks they need to come up with some kind of recommendation that would force FAME to get the needed information.

Sen. Libby thinks at the public comment period at the GOC's next meeting they will be able to have a back and forth with FAME to better understand the dynamics, and one of the options the Committee has at their disposal is crafting a bill to introduce to the policy committee that reflects the recommendations of this report and what the GOC, as a group, would like to see for changes.

Sen. Bennett said the program had a \$5 million annual cap for eligibility for funding and it frequently hit that \$5 million cap on January 2<sup>nd</sup>. It has been expanded to a \$15 million cap. He wondered if OPEGA looked at that dynamic at all in their review, particularly where it related to the goals of the program. FAME tried to deal with this in different ways. Maybe some goals are more important than others, so in an era when we have limited resources in this program, perhaps something we should look at is what goals should take priority rather than disbursing credits on a first come first served basis. He asked if OPEGA looked at the operational dynamics in their work of the review.

Ms. Ricci said OPEGA definitely heard from businesses about the challenge of that \$5 million cap. There is a brief piece in the report that says some businesses struggled if the credits were not available, and that could have been because either they had run out for the year or because the business hit their own limit or cap and suddenly they felt they were at a cliff. There was a disincentive for investors to invest if the credit was no longer available. OPEGA heard investors waiting until the next year before investing when credits were available again. That was clearly a challenge that seemed to no longer be a challenge with the increased cap. The program did not meet the \$15 million cap and thinks in 2020 it got to a little over \$10 million so there were still funds left over. But one could imagine that scenario happening again in future years if the program continues. Certainly, in terms of the priority of goals, that is relevant to the extent of making sure to having the funds that are available, whether it is \$5 or \$15 million to ensure the available funds are most effectively deployed. You want them to be going to the businesses that are more likely to advance the State's goals, whatever those goals may be.

Sen. Bennett said OPEGA did get feedback from investors, people who use this program and asked if they had some sort of organized approach for outreach.

Ms. Ricci said OPEGA spoke to 1 representative of the Maine Angels, which is an unaffiliated group of investors. Some of the business participants that OPEGA spoke to were also investors in other businesses so there were some individuals that were both entrepreneurs and investors in other businesses. OPEGA focused on the business side and less on investors.

Sen. Bennett said he would reflect that this program was designed to encourage investors to invest in more risky businesses than they might have an appetite for otherwise and to give the State a participation in that risk bearing. Any of the data OPEGA has from investors that they can consolidate into some form, even if it is

anecdotal and just a few, he thinks would be beneficial so they could pose more questions on that side of the program going forward.

Ms. Ricci asked if Sen. Bennett could be more specific about what he was looking for about the investors? Sen. Bennett said, to the extent that OPEGA has received comments about the efficacy of the program for investors, such as the Maine Angels and any others, if she could consolidate that into one document, even if it is raw responses, without any kind of analysis on it, that would be useful.

Sen. Timberlake said after serving 4 years on the Appropriations and Financial Affairs (AFA) Committee and from listening to Ms. Ricci's presentation, the Seed Capital Tax Credit is a program that has been designed and changed by Legislatures and is not designed to fit any one category or any one business. There has been different legislation introduced by legislators from different parts of the state to fit businesses into the Seed program. That is the way the Legislature works. He said he has dealt with companies who have worked with FAME, and thinks the program is designed to work the way it is currently working. He is not sure more data is needed and asked if Ms. Ricci thought that they could work with what they have for information or does she think vast changes need to be made?

Ms. Ricci said this is a well liked program amongst all participants and is why OPEGA focused on how could it be made more effective. If the Legislature says we want all businesses to benefit and to create all types of jobs and we do want this program to be very broad for that purpose, then that is a matter of policy for the Legislature. But, she said the fact that everyone has slightly different expectations for it, is what makes it challenging. Some people want it to be very broad, others might want it to be very focused and focused on promoting specific industries. There can also be many different approaches. OPEGA did, as noted in Appendix E, give examples of how other states have provided more focused approaches. OPEGA is not saying this is the way to go, these are examples for context. Every state is different. Areas of the state wishing to prioritize for economic development are all going to be different. It is simply a question of and a matter for the Legislature to decide, what industries are so valuable to the state that it is worth the cost of providing the incentive. OPEGA does not provide that answer, it is something for the Legislature to determine. It may be that it is the very broad approach, but we think it is worth considering, or at least articulating.

Director Nixon said it is also that OPEGA noticed that if the goals are that broad then it would be helpful to make that clear in the statute. Currently the statute says increase jobs in the export sector and that is the only part that the statute is saying where you want to increase jobs. That is the fact that OPEGA was trying to point to so, if it is broader than that, it would be helpful to have the statute catch-up to wherever it has evolved to at this point. As Sen. Timberlake noted different things have been added in and OPEGA's recommendation is to take stock of here is where you are and what are the goals. That will set the program up for OPEGA to better evaluate the next time around.

Sen. Timberlake said he has sat in the AFA Committee when people from all over the state, from all sides, and lobbied for the program and thinks that is why it is so variable and helter-skelter all over the place because it meets different things in different parts of the State.

Rep. Stover asked of the 134 businesses listed, if OPEGA knows how many still exists?

Ms. Ricci said they do not. OPEGA started to do some research, but it was challenging without actually physically contacting each of them. OPEGA contacted some, some could not be located, some had a website presence which might indicate that they were existing, but when OPEGA actually spoke to them they did not in fact have any employees and did not have any revenue. They were not able to do a comprehensive look and that is one of the reasons why they suggest that if that is an area the Legislature sees as an important outcome, then that should be built into what is expected to be received from FAME. She said she should say that the 2020 statutory change attempted to get at that. It put a requirement on investors to report to FAME if a business

they invested in had ceased to operate, but the onus is on the investor and there is no enforcement mechanism. There is a desire for that information, but not sure that the current statutory mechanism will get you what you want.

Rep. Stover said she agreed because we have 134 businesses that hypothetically exist, but actually don't. She was trying to get a sense of the return on investment. Of the 11 years, what is left, and that ties directly to job creation. She also said if you have not had compliance with mandatory reporting it would be impossible to get a sense of that because some are not reporting. We don't know if they exist and don't report or if they don't exist and don't report.

Rep. Blier asked if Ms. Ricci had information on the investors – how many are in-state and how many are out-of-state and also how many investors have multiple investments within the Seed program.

Rep. Arata asked, in regard to whether or not businesses still exist, if there was any reason why one could not look up the articles of incorporation to see if they are currently incorporated.

Ms. Ricci said there sometimes can be a disconnect in timing and when a company is dissolved it may cease trading and then take a bit of time to dissolve completely. There is also the question of a business existing as an LLC is different than from having employees and actively trading. OPEGA did observe that in some of the businesses they spoke with, it has a website, appears to exist, still registered and then when they spoke to the proprietor, it seemed a little less clear about whether they were actually trading. One could determine either yes, no or unsure, but she is not sure that would tell you if there are employees or what their revenues are.

Rep. Arata agreed, but said if you don't have any revenue you are not going to hire an attorney to file your paperwork every year.

The Committee thanked Ms. Ricci for her report presentation. Sen. Libby noted the public comment and Committee work session will be on the agenda for their next meeting.

## **Unfinished Business**

- **Work Session on OPEGA's Proposed Scope of Work for the review of the Office of Child and Family Services**

Director Nixon summarized OPEGA's Proposed Scope of Work for the review of the Office of Child and Family Services. (A copy is attached to the Meeting Summary.)

Sen. Libby referred to the timeline for the proposed scope of work and asked OPEGA to consider a different delivery schedule. He is concerned that the first quarter of 2022, March 31<sup>st</sup> with 2 two weeks of legislative session left is not adequate time for the Legislature to consider substantive policy recommendation changes. What he talked to OPEGA staff about, and asking the GOC to consider, is rearranging the timeline for the work delivery schedule. He thinks what could work is having the Oversight of Child Protective Services section "3" be delivered January 15, 2022.

Director Nixon said if that is when the GOC needs the work completed and is the consensus of the Committee, OPEGA will figure something out. What is outlined in the Proposed Scope of Work is what made sense to them regarding the work on the review. She believes the review of the oversight structure is a separate piece of work that can be carved out and scaled at different levels.



Sen. Libby reminded the GOC that once OPEGA completes a report there is still a 4 week process laid out in statute for them to get their report to the affected agencies and feedback to be returned. They are struggling with those kinds of restrictions. If the Committee wants every question explored thoroughly, to every end, that could be a multi-year project. He does not believe that timeline works for the GOC so they are trying to find the middle ground.

Sen. Libby said he is going to recommend "3" in Table 2 be delivered by January 15, 2022 to the GOC as an Information Brief, not a full report. Delivering section "1" by March 15, 2022 and then delivering a complete final report by 3<sup>rd</sup> quarter, 2022. He said the goal is to try to have a review of the oversight structure for them in January so the Legislature may consider implementing changes through the Health and Human Services (HHS) Committee. Getting a big piece of the analysis done on what is going on in DHHS and the providers by March 15, 2022, would give them a month left in the Session for DHHS to consider that work and make adjustments.

Sen. Timberlake agreed with Sen. Libby. He suggested putting other OPEGA reviews on hold so the staff can work on this review because he considers this the most important issue happening in the State of Maine. He does not care if OPEGA does not do another thing between now and the first of February but to get a report to the GOC that they can report back to the Legislature and write whatever legislation they need to. He asked if the GOC was putting off all other work in order to put all hands on deck to make this review a priority?

Sen. Libby said the timeline he proposed is more aggressive than what OPEGA staff are recommending. He thinks staff are also going to need to complete reviews required by statute, for example, tax expenditure reviews. The GOC does not have the ability to tell OPEGA not to deliver those reviews barring some action by the Legislature. Given how the staff approached the last review of OCFS, which was in some areas all hands on deck to get the deliverable done, he believes the Committee should defer to the leadership of OPEGA to manage the work flow. The intent is to meet this aggressive timeline, all hands will be on deck as needed and directed by the Director.

Director Nixon gave the status of OPEGA's current reviews so the GOC would have a better sense of OPEGA's work. They are currently engaged in 2 tax expenditure full evaluations, the Credit for the Rehabilitation of Historic Properties and the Research Expense Tax Credit. OPEGA also has the statutory requirement to do the Annual Expedited Tax Expenditure Reviews and that is in progress. The Citizen's Initiative and People's Veto project is complete with the GOC having the public hearing today. The Seed report was presented at today's meeting and the public comment will be at the next meeting. The one other active project OPEGA has is Part II of the Maine Commission on Indigent Legal Services looking at the question around screeners. Had this request for a (child protective services) review not come up, she thinks OPEGA was moving along to wrapping up that MCILS report so that is the other non-tax project that OPEGA has that is not quite done. The question then becomes what to do with that work.

Sen. Timberlake said the Legislature knows they will probably be coming back in September or October for a Special Session. He asked if the GOC could legislatively move those reviews back so that they can move the staff working on the tax review, to work on the child protective review. Whether the Legislature gets the tax review information in March or in July of next year is not going to make a difference. The child protective review makes a difference and he would take all the OPEGA resources to make this work move forward as fast as it can. He said he is willing to bring whatever is necessary before the Legislative Council to get this work done as quick as possible.

Sen. Libby referred to Director Nixon and the discussion they have had about the question of timing and how she assigns staff. Even if OPEGA was all hands on deck, that final (child protective services) report is still going to land before the GOC during the summer of 2022. The question is does the Committee want that report in July, August or September when they are not in session.

Sen. Timberlake said he wants the report the very first day that he can have it.

Sen. Bennett subscribed fully to Sen. Timberlake's comments. He said the tax expenditure reviews are important, but nowhere as important as the child protective review. He hoped they could pass in statute whatever is necessary to relieve the Committee, or at least give the Committee, on a majority vote, the flexibility to make these calls and to defer statutory work. That seems to be a logical step for the Committee to adopt regardless of this particular issue and in particular, given this example. He thinks the Committee should be pursuing something along those lines on an emergency basis when they are in session next.

Sen. Libby said if the Committee is agreeable, he would like to take a 5 minute recess. The Committee agreed.

## **RECESS**

The Chair, Sen. Libby, recessed the Government Oversight Committee at 12:15 p.m.

## **RECONVENED**

The Chair, Sen. Libby, reconvened the GOC meeting at 12:28 p.m.

Sen. Libby said the Chairs, Leads and OPEGA staff discussed the work timelines of the child protective review and what the staff capacity is to report quality work on a defined schedule. He said he was going to make a suggestion and welcomed Sen. Timberlake's feedback. He said the timeline they discussed of delivery part 3 of the scope on January 15<sup>th</sup>, part 1 of the scope on March 15<sup>th</sup> and a final report inclusive of all 3 components by September 30, 2022. That the OPEGA staff could accomplish that, complete quality work, but that the GOC would direct the OPEGA Director to manage the staff resources to ensure deliverables by those dates, which may include reassigning staff from other pending projects. He asked Sen. Timberlake if that was his recollection of the discussion they had during the recess.

Sen. Timberlake agreed that is what was discussed and that the OPEGA Director was going to try to get the reports out as soon as they could and would move staff as she felt necessary to get the work done on the review of Child Protective Services and to expedite this review to the forefront.

Sen. Libby said, for context, the GOC directs the work of OPEGA. They want to be sure they are setting the broad strokes for policy and goals and not getting into the day-to-day management of OPEGA. He said the recess was helpful in clarifying the roles.

Rep. Stover agreed with what has been said and hoped that if the OPEGA Director needed additional resources as she looks at the 3 levels of work to be done, that she can reach out to the Chairs to make sure those resources are made available.

Sen. Libby thought monthly report backs by OPEGA to the GOC will give them a sense of how that work is developing and will ensure that they are going to meet the deadlines that have collectively been agreed to for deliverables.

Sen. Libby noted that the GOC had invited lawmakers who have some policy expertise and oversight authority regarding child protective services and would welcome and appreciate any comments on OPEGA's Proposal for Review of Child Protective Services.

Sen. Claxton, Senate Chair, HHS Committee thanked the GOC for their work regarding Child Protective Services. A couple of things he wanted to flag for their consideration is if there is some way to increase the

resources available for folks from OPEGA, they should take every opportunity to do that. That might help move things along faster, even if they brought in a consultant to do certain, well-defined, specific jobs. Secondly, one of the GOC members referenced Casey as looking at the 4 child deaths and said he thinks Casey's task is much broader than that. It does include the specifics of the 4 deaths, but it will also look at process, procedure and policy within OCFS and DHHS. He is certain the information from Casey will be very helpful. He thinks we need to be cognizant of how the various reports or reviews we are going to get are going to interface. He understands the urgency of getting the results sooner rather than later and said the HHS Committee is going to hear from Casey by the end of October and from DHHS at some point on schedules. He said that will give them other legislative opportunities without waiting for a final report. The HHS Committee is looking to meet the first of September and to have the first meeting relate to this topic and other reports that are due. They will be hearing from Casey, through the Department, and from OPEGA in terms of an update. If there is an opportunity to have the HHS Committee and the GOC meeting concurrently, that would be welcomed. Sen. Claxton said those were the things he wanted to flag for the GOC's consideration as they shape their process from here to get to where they want to be, with the perspective that they are not going to solve this between now and the end of the short session. They are hopefully going to identify some issues that they can begin to address with legislation and he is sure, with some support from the Legislative Council, the HHS Committee can introduce some late bills that come out of the Casey report at the end of October. He is not feeling constrained by the calendar, he is feeling constrained by the urgency of this matter.

Rep. Meyer, House Chair, HHS Committee, said she was present at the July 14<sup>th</sup> GOC meeting and welcomed the opportunity to make some comments regarding the review of Child Protective Services. She thanked the GOC for their unanimous decision directing OPEGA to conduct an immediate review of OCFS. As policy makers, this is the most important work of their public service. At the intersection of OPEGA's findings, there will also be those arising from the Department's internal review, the recommendations forthcoming from Casey, and work that will be done once criminal investigations are complete and the benefit of a full understanding from law enforcement of the circumstances surrounding the recent deaths of 4 Maine kids. When a crisis arises, and what greater crisis is there than the violent death of a child, it is undoubtedly the call to action that Commissioner Lambrew has described. She knows after serving 2 terms as a member of the HHS Committee, and despite some comments to the contrary, there has been a great deal of ongoing internal review, work within and across the Department and with Muskie, legislation introduced by DHHS, now law. There has been a rebuilding after a previous period of dismantling, and work done by the Legislature of child welfare initiatives by the HHS and other committees to the full Legislature, generally passed unanimously and signed into law. Child welfare services have not gone without scrutiny or an effort to invoke positive change on behalf of Maine families and Maine children. Rep. Meyer said it is also true, and deeply saddening, that the current internal and external efforts to assess policies, procedures and practices are occurring as a result of another crisis involving the deaths of children. Clearly, there is important work still to be done. Work that will require open minds and the willingness to embrace change if it is recognized as crucial to any Maine child for whom abuse and neglect are central features of their existence, for those enduring a sad and painful childhood, that for some, is a means to a tragic and violent death. Shining a bright light on the matter of child welfare and child protection in Maine should serve to offer concrete recommendations for policies and practices that can reduce child maltreatment and perhaps for systemic approaches, both within the purview of Child Welfare Services, and across the broader community and social policy landscape, that can better identify and respond to the needs of children and families where maltreatment has already occurred or where the risk for abuse and neglect may exist.

Rep. Meyer said on September 1<sup>st</sup>, as Sen. Claxton noted, the HHS Committee will meet here at the State House. Sen. Claxton and she are grateful to Ms. Nixon to agreeing to provide the full Committee with an update on the scope of OPEGA's investigation as discussed at this meeting, as well as the timelines decided upon and the HHS Committee will be provided, as well, a status report on DHHS's internal review and also that undertaken by Casey. She said also on the HHS Committee's agenda on September 1<sup>st</sup> is that DHHS will be discussing and taking public comment on the LIFT report. You might recall this legislation from the 129<sup>th</sup> Legislature. Part of the package of bills brought before the Committee by former Speaker Gideon and now Sen.

Stewart and aimed at helping families in poverty meet their basic needs and to ensure economic opportunities are accessible once those families are stabilized and able to take advantage of them. This is not an unrelated subject matter. In fact, the stress of poverty is a recognized risk factor for child abuse and neglect. In seeking short and long term positive outcomes for Maine kids, we can do more to prevent abuse and stabilize at risk families by combining early intervention programs and services with access to well run safety net programs like SNAP and TANF, housing and childcare vouchers and Mainecare coverage, ensuring that we are truly reaching all those Maine families in need. The safety, security and welfare of our children involves a complex array of programs and the capacity and resiliency of those programs have been tested over the last 17 months. We remain in the midst of a demonstration in real time of how both an opioid crisis and a pandemic can, along with unmet mental health needs, serve to stress already fragile families to breaking points. How our systems have responded will be revealed in the various investigations underway and the HHS Committee invites the GOC to participate in joint meetings with them, perhaps the first could be in November when they expect the finalized report from Casey.

Rep. Meyer thanked the GOC again for the invitation to address them. It is an honor to serve along side all of them as they seek to ensure that here in Maine all kids are safe, healthy and well cared for.

Sen. Diamond said he wanted to applaud OPEGA staff for putting together the structure of doing an earnest and detailed investigation. The path they laid out is one, if the Committee is able to follow through on, will produce, for the first time, some real productive results and changes. He would make a couple of notes regarding the scope of work on the review of Child Protective Services.

Sen. Diamond referred to page 2 under the 5 key areas listed saying they are all very important and thinks a lot of them came out of comments at the July 14<sup>th</sup> GOC meeting. He suggested one other area. As heard on July 14<sup>th</sup> from Deputy AG Marchese that because of the AG's Office's backlog of cases, they do not expect to get to the June homicides for 18 to 24 months. He said that is a real handicap for everybody, including the GOC, and would suggest that part of the review would be what are the possibilities of prioritizing child homicides, children who were in DHHS care, and moving them up closer to the top. He thinks that could be done and he has put legislation in only as a holder. He would ask the GOC to look at that piece because waiting 2 years to hear what happened to Maddox Williams is not acceptable.

Sen. Diamond referred to the place which talks about surveying frontline workers and said even though this will happen, he would suggest you add former frontline workers and administrative people. The interviews of current administrators within DHHS are important to hear from, but he thinks there are administrative types at that level who are former staff and would be able to add a lot to the information the GOC seeks in looking to make some changes. He thinks those individuals are willing to share their experiences with OPEGA.

Lastly, Sen. Diamond would point out the reunification aspect (in "2" in Table 2) that one of the problems that has happened over the last 20 years within the reunification philosophy is that it has changed. It changes depending on the circumstance of the most recent death of the child. For example, Logan Marr in 2001 because she died at the hands of her foster mother, reunification became a very high priority, maybe almost at all costs. Then over the next 4 administrations reunification would change. It depended on the details of the homicide of the child's most recent death. He said perhaps the most appropriate manner to address reunification would not necessarily go in with the fact there must be reunification at all costs, or at least most of the cost, and more on what is best for the child. If that could be stated as a goal as opposed to giving the assumption that reunification is always what we want because clearly with Kendall Chick with her grandfather and Marissa Kennedy with her mother and step-father, and now with Maddox Williams with his mother, reunification can be and should be considered, but not as the ultimate goal.

Sen. Deschambault said reunification is a large part of DHHS and Sen. Diamond is correct to make the comment that it was based on you can take as long as you want to reunify and then you had to do it within a

year. She would like to have more information regarding reunification. She thinks the families are into a lot of substance use and if they don't help themselves you cannot return that child to the same environment they were in. They talk about reunification, but she does not know what the latest policy is on terminating parental rights. She knows people do not want to hear about that because it is their child, but if mom and dad do not shape up, it is not their child.

Sen. Libby said he talked with Director Nixon and thinks OPEGA staff can take the suggestions made at this meeting and explore if they are feasible within the timeline the GOC discussed previously. He thinks, for example, the reunification movement in statute over time is a piece that can be examined through statute with not a lot of reliance on outside entities responding, so may be something that is relatively straightforward and can be incorporated. Investigating former workers in a systemic way may have some challenges and implementation, but he thinks they are hearing from former employees and part of that feedback could be incorporated into the scope. He asked Sen. Deschambault if her suggestion about parental rights was an examination of statutes. Sen. Deschambault said it is policy and said the pendulum swings depending on a commissioner, the year, or the front page news, it never seems the same. So, it is either we are going to reunify as much as we can or we are going to terminate and parents take longer to recover than 1 year. She does not know what the latest policy is. Sen. Libby thinks they can incorporate that into the general information overview that OPEGA staff collect.

Sen. Timberlake said one of the most important things that Sen. Diamond brought up, and he does not know what authority the GOC has, or what they can do, other than maybe call the AG's office themselves, is to see if they can get the child homicide cases moved up their workload list because he agreed, waiting a year and a half to two years to get reports on the death of a child, is not reasonable. If the GOC has authority to change that, he would like to see them use it. If the Committee does not have authority, he would like to see everyone call the AG's office to let them know this needs to be a priority.

Sen. Libby said he was not clear how the statute governing the AG's process works. As a first step he said the Co-Chairs and Leads can reach out to the AG's Office and make inquiry and then push from there. He does not know if that is an OPEGA function or would be more of an elected legislator function.

Sen. Timberlake asked if the GOC could put a letter together, as a Committee, asking the AG's Office to move child suicide cases to the top of their work. He doubts that the GOC has any authority over the AG's Office, but if a letter came from the GOC saying we are doing a review on DHHS, this needs to be done so we can do the review.

Sen. Libby said the Co-chairs have the authority to write a letter with unanimous consent of the Committee. His question is he does not know if this is an AG issue or a court issue and suggests figuring that out before taking a vote on the Committee's action.

Rep. Arata remembers distinctly that after the previous set of tragedies, then Governor LePage, said that the objective was going to be whatever is in the best interest of the child. She did not know if that was something in statute or a policy-decision and for her, that seems to be a foregone conclusion and is surprised that is something that would be controversial. The best interest of the child might be reunification and often is. She would like to know if anything has changed since Governor LePage said that.

Sen. Libby thought Rep. Arata made a great point and thinks Sen. Diamond is putting further emphasis on that in doing the historical look back of 21 years to see what the policy is because it has fluctuated and has been like a pendulum. He thinks OPEGA staff is capable of reviewing that matter and is included in looking at policies. Sen. Libby said to his knowledge the Legislature has not amended that part of the statute since 2019 and believes Governor LePage may have signed an amendment to that statute that the Legislature passed. Sen. Diamond agreed.

Rep. Stover thought it would be helpful for the Committee members to read Title 22 because it may help them develop more questions and understanding of what is policy and what is statutory requirements.

Sen. Diamond noted that Governor LePage came before the GOC in 2018 regarding the Kendall Chick and Marissa Kennedy deaths and that is when he made those statements and declarations. Depending on how far back you want to go, you can see the same enthusiasm to have reunification be the policy. It does change back and forth.

Michael Petit, former Commissioner of DHHS said he did not believe that the Proposed Scope of Work for the review of Child Protective Services captures the urgency that the GOC members feel about this issue. It is a well done document, but does not know how it compliments the Casey review. The urgency is that approximately half the children in the United States who were killed at home are known to the Department and it looks like that is the same for Maine. Someone said there were 11 deaths last year, all known to DHHS. When you look at which children need the most protection, it is the children who are already living with somebody who has harmed the child and are in their open protective cases. He could not tell by looking at Table 1 in the Proposed Scope where the issue of protecting child safety is while the child is at home. He sees reunification, which implies the child is out-of-home, but he does not see where there are services for the child at home. The other issue he would raise is that the number of deaths that need to be looked at include those children that died by accident and injuries. What has been discovered across the country is it understates significantly the number of child deaths in a state if you include drownings, fires, car accidents. Those are typically treated as accidents and not listed as the neglect that they are. For example, the child is near a river the mother passes out on alcohol and the child dies. One thing he would suggest is that the GOC ask DHHS to do, and they have the capacity to do it, is to look at all the children who have died in Maine in last 5 or 3 years by accidental causes and see how many of those are open. That will tell you something about the system that they have right now.

Mr. Petit heard the GOC's discussion regarding the procedure for legal proceedings and said 30 years ago when he was the Commissioner and Joseph Brennan was the Governor, they had several child deaths. There was a group put together of department heads and others and the issue came down to cooperating with one another and changing the legal system. If he looked at the document they did 30 years ago and just scratched out the year 1984 for 2021, it would sound strikingly similar. The urgency he thinks the Committee could address right now, and DHHS could do this without any statute change or additional money, is to do a desktop audit of all of the children who are in care and are at home right now. What they are finding is that caseload practice at the ground level where the parents and the child are together, that that is the place where children are dying, and account for more than half of the cases. What he would suggest the GOC consider doing to complement their work and what can be done right now for the kids that are currently in jeopardy, is that the Committee consider supporting, and this would be up to Commissioner Lambrew, an open desktop review of a child protective worker, a supervisor, somebody from mental health, somebody from law enforcement, should review all cases that are open and the child is at home. It is not to find fault with anybody, it is not about procedures and policies, it is not what has just been talked about at this meeting, it is not meant to be a study. It is meant to actually protect children who are at home now. The caseworker may be 25 years old. The supervisor may be 27 years old and the circumstances in the household may have changed. The guy goes to prison for beating up his wife and child and returns. Does anybody know he returned? Do the police or the Corrections Department call and say this guy is back out so alert OCFS. Does somebody call CPS and say this guy is out, does the caseworker know? You could look at the households where the children are under 5, the leading cause of death is blunt force trauma. He said he wrote a report on that and emailed it to the GOC members. Mr. Petit said a specific action that can be taken is to go into those homes right now and see if the conditions warrant a different response. Do they need to be intensified or not and you would not know unless you actually looked at the case review? That could be done on short order and thinks a lot of people would volunteer to do that work.

Mr. Petit said he would like to know exactly what Casey is proposing to do for work and how much of it would be overlap with what OPEGA is doing. The idea of the Commissioner saying we want to visit these homes. It is not a witch hunt, it is not highly publicized, it is just being able to say we are taking a deep drive on cases. That is an administrative decision that could be made by DHHS, but the GOC could prompt a look at whether there is feasibility to what he was talking about. Mr. Petit said one issue to keep in mind is there are significant difference from region to region. Some regions may pull more children from the home than others. Some may reunify the child sooner than others. There can be differences in units, where 1 region may have 5 or 6 units, there can be significant differences between those units and within a single unit there can be differences so there is a lot of freelancing going on in this work and because of the lack of training and supervision, people are, in many cases, just winging it because they are pressured to do certain things, when in fact, they are not fully qualified to make some of the decisions that they are making.

The Committee thanked all those present at the meeting for their comments and suggestions regarding the review of Child Protective Services.

**Motion:** That the GOC approve OPEGA's Proposed Scope of Work for the review of Child Protective Services, DHHS/OCFS with the following adjustments to Reporting items 3 and 4 (See page 3, Table 1, "Reporting):

3. Information Brief on Scope Area 3 by January 15, 2022,
4. Initial Evaluation Report on Scope Area 1 by March 15, 2022, and
5. Final Evaluation Report on, including Scope Area 2, by September 30, 2022.

The GOC directs OPEGA to prioritize the use of staff and adjust staff assignments to complete the work on the timeline the GOC has laid out. (Motion by Sen. Timberlake, second by Sen. Deschambault.)

**Discussion:** Rep. Arata asked if the GOC was going to include any of the recommendations spoken about by Sen. Diamond and Mr. Petit.

Sen. Libby said OPEGA staff have taken notes on all of the items discussed and thinks everybody has offered suggestions that the GOC could and should incorporate. He thinks they need to give staff the flexibility to complete as much as they can in the timeline the Committee has given them. The big asterisk to the whole project is that they may not have every question on the scope answered by January 15 or March 15, but that is the tradeoff in getting this work back to the Committee in that timeframe.

Rep. Arata thought looking for children who are known to this system could be part of "2. Protecting Child Safety" and thinks that would be inclusive. The AG's Office prioritizing child homicides is something they could do in a letter later. She wished the timeline was sooner and asked if the GOC had any deliverables planned for the next meeting in preliminary data that could be actionable.

Director Nixon said once the GOC assigns OPEGA the scope of work, it is very critical to OPEGA's process that they work on the review independently and then report to the Committee once it has been reviewed and vetted within OPEGA and staff have done the data collection and analysis they need to do to answer the questions. What they have tried to do here is to piece it so that the Committee is not waiting a year to get all the information. Something OPEGA cannot do is report incrementally on the results of part of the review. When you set forth to do an independent evaluation project we can say we will give a report on scope question 1 in March. It may not answer every bullet in every additional question given that it needs to in order to be done in that time, but it is complete for what OPEGA is able to answer. She is not sure about what Rep. Arata is looking for at the next meeting. The Director will be reporting back on the status of OPEGA's work, Casey's work and the Child Welfare Ombudsman's, and hearing from the Panels.

Rep. Arata said she would like reassurance that if in the next days, weeks or months OPEGA comes across something that is urgent she hopes that is brought to the GOC's attention. She would be happy to have a special emergency meeting to deal with any urgent matter.

Sen. Libby said to Rep. Arata's point, he struggles with the timeline as well and understands that OPEGA staff will undertake the work that the GOC directs them to, but if the Committee creates a timeline that is too short, he is concerned they will not get adequate answers to the questions they are seeking and that is the trade off, as he sees it. He hopes Committee members feel comfortable with the timeline, understanding that maybe not all of them are happy as it is laid out.

Rep. Stover referred to the timeline and said the same would apply to DHHS. If they found something that they thought needed attention, she hoped they would bring it to the HHS Committee and GOC.

**Note:** The above motion passed by unanimous vote 10-0, 2 absent. (Rep. McDonald voted on the motion in accordance with the GOC Rules.)

- **Continued Committee discussion on Request for OPEGA review of the RFP Process Administered by the Department of Public Safety, Bureau of Highway Safety and associated Department of Administration and Financial Services procurement policies**

Sen. Libby said the Committee had a lengthy discussion on this request for a review of the RFP Process at their June meeting. He said the question for him is does the case of the appeal brought forward by the business in Southern Maine represent systemic issues with procurement and appeals or was this a stark example of a bad case where the appeals process actually did as it should have. His feeling is the latter and that there is not evidence yet of a systemic issue. However, if the Committee is interested, he would move that they draft a letter to the policy committee, which is the State and Local Government Committee who oversees the Bureau of General Services and the procurement review process, and share the information that the GOC has collected with SLG Committee and suggest that in the short session they review the statute governing procurement and appeals and that the OPEGA staff not be assigned any more work on this review request.

**Motion:** That the GOC draft a letter to the State and Local Government Committee to share the information the GOC has collected regarding the request for OPEGA review of the RFP Process Administered by the Department of Public Safety and suggest that they review the statute governing procurement and appeals. (Motion by Sen. Timberlake, second Rep. Stover, passed by unanimous vote, 10-0, 2 absent.) (Rep. McDonald voted on the motion in accordance with the GOC Rules.)

## **Report from Director**

- **Status of projects in process**

Discussed earlier in the meeting.

## **Planning for upcoming meetings**

Sen. Libby noted that the public comment period on OPEGA's Evaluation of the Maine Seed Capital Tax Credit report will be on the agenda for the September 8<sup>th</sup> meeting. Also, on the agenda will be the quarterly report back from the Maine Commission on Indigent Legal Services. The GOC will have an update on the child protective work.



### **Next GOC meeting date**

The next GOC meeting is scheduled for Wednesday, September 8, 2021 at 10:00 a.m. Unless circumstances change, the meeting will be held in the GOC's meeting room, Room 220 Cross Building.

### **Adjourn**

The Chair, Sen. Libby, adjourned the Government Oversight Committee meeting at 1:22 p.m. on the motion of Sen. Timberlake, second by Sen. Bennett, unanimous.