



SEN. NATHAN LIBBY, SENATE CHAIR  
REP. HOLLY STOVER, 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. JESSICA FAY  
REP. MARGARET O'NEIL

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

**MEETING SUMMARY**  
**October 19, 2022**

**Call to Order**

The Chair, Sen. Libby, called the Government Oversight Committee to order at 9:07 a.m.

**ATTENDANCE**

Senators: Sen. Libby, Sen. Deschambault, Sen. Keim, Sen. Bennett, Sen. Timberlake  
Absent: Sen. Bailey

Representatives: Rep. Millett, Rep. Stover, Rep. Arata, Rep. Fay  
Absent: Rep. O'Neil, Rep. Blier

Legislative Officers and Staff: Peter Schleck, Director, OPEGA  
Scott Farwell, Senior Analyst, OPEGA  
Jennifer Henderson, Senior Analyst, OPEGA  
Sabrina Carey, Secretary, OPEGA, GOC Clerk

Attorney General Representative: Chief Deputy Attorney General Christopher Taub

## Introduction of Committee Members

The members of the Committee introduced themselves.

## New Business

(To watch this meeting - the recorded Live Stream can be viewed here: <https://legislature.maine.gov/Audio/#220>)

- **Meeting Summary**

The September 21, 2022, Meeting Summary was accepted as written.

- **Maine Wild Blueberry Commission**

Sen. Libby provided an update on the status of the Wild Blueberry Commission Review Request and explained that there had been communication with the Agriculture, Conservation and Forestry Committee and the Washington County delegation, and the issue is well handled by the ACF Committee. Sen. Libby suggested there be a motion to remove the item off the review list.

## Committee Vote

**Motion:** To take the Wild Blueberry Commission Review Request off the Review list

(Motion by Sen. Timberlake, Seconded by Sen. Keim, passed by unanimous vote, 11-0)

(Sen. Bailey and Rep. Blier voted on the motion in the allowed time frame in accordance with the GOC's rules)

- **Child Protective Services**

Sen. Libby explained that the GOC had received an answer back from the Department of Health and Human Services regarding the Subpoena the committee voted during the previous meeting to serve on the Department, and asked OPEGA Director Peter Schleck to further explain the situation.

(GOC Subpoena to DHHS can be found here: <https://legislature.maine.gov/doc/9121>)

(DHHS Response to Subpoena can be found here: <https://legislature.maine.gov/doc/9132>)

Director Schleck stated that the Department had responded to the Committee in a letter dated October 6, 2022.

The letter lodged a formal objection to the Committee Subpoena and indicated and reiterated the prior opinion of the Assistant Attorney General in charge of the Child Protection Division as grounds for why they felt the law did not permit them to comply.

Sen. Libby asked what the options were for the committee moving forward.

Director Schleck answered that there is a provision in law under Title 3, where the committee can seek to apply to the Superior Court to seek obedience with the subpoena.

Sen. Timberlake stated that he believed the committee needed to push the subpoena forward. It is something that is very pertinent to what happens to the people of the state of Maine, who want to know what has happened.

He thought it was pertinent that it is shown what happened and where the system failed within DHHS. He stated he wanted to make a motion to move the Subpoena forward.

Rep. Stover asked Director Schleck what his thoughts were on moving forward with the filing to the Superior Court. She asked the Director and Chief Deputy Attorney General Chris Taub, if the court would be able to

hear their case in the short period of time (before the end of the legislative session) or the likelihood of hearing anything back from the judge.

CDAG Taub answered that it is very hard to predict. It is up to the court's scheduling. He stated that the Kennebec County Superior Court seemed to have a lot on their docket. It was not clear to him whether the court may give priority to something of this nature. He did not believe they would have a final resolution from the Superior Court before the end of the year.

Sen. Deschambault asked if the court will focus on the term "Legislative Official" in the statute. She stated that the only way to change that if the court rules against the committee, would be through legislative action.

CDAG Taub confirmed that there is an open question about whether the current provision would apply to the GOC, and whether they are all legislative officials responsible for child protection. He confirmed that the other way to have this cleared up would be to pass a law that gives the GOC access to Child Protection Records.

Sen. Bennett stated that he was in favor of the motion. He stated that legislative official should be interpreted, if nothing else, to include legislators themselves. He stated that they (the GOC) need to do their job and hold the executive branch to account. There is no more important issue than this. He explained that the larger issue is with the authority and ability of the Legislature to hold any Executive Branch Office to account on any issue. CDAG Taub stated that the issue is not whether the committee were Legislative Officials, but whether they are an appropriate Legislative Official with responsibility for Child Protection Services.

Sen. Keim stated that the committee should go forward with taking the matter to court, to say that it is the Committee's role and right, or they would lose by default. She asked CDAG Taub what the next steps are regarding the process. She felt the Committee should meet whenever needed to make the decisions if there are any needed in the following couple of weeks. She stated that waiting for the monthly meeting is a delay that is unacceptable.

CDAG Taub answered that if the Committee votes to file an action in court, he would go ahead and prepare the paperwork. He stated that he would want the client (the GOC) to review it to make any edits or changes, and suggested that process may be cumbersome if the entire committee is reviewing it. He suggested that the committee could vote to delegate certain members who are going to be the representatives of the committee for the litigation, and those persons would be the client. He would then send any drafts to them and allow them to make any edits.

Sen. Keim agreed that was a good idea. She suggested sending a letter to the court to portray to them the urgency of this matter from the Committee's perspective.

CDAG Taub thought that was a great idea. He stated that they need to make the case as visible as possible in the court's eyes.

Sen. Keim stated that she would prefer that all the members of the Committee sign the letter.

Sen. Timberlake asked about the set up in the Attorney General's office handling the separation of representing both sides of this case. He asked for CDAG Taub to explain how the work doesn't overlap or he is not influenced by the other side of his office.

CDAG Taub answered that it is not uncommon for their office to create a wall between some attorneys and other attorneys. The Attorney General sometimes has obligations to represent two different agencies that are in conflict with each other. So, one set of people will represent one agency and other people will represent the other agency. He explained that he would not converse or talk strategy with anyone in the office who is representing DHHS. He suggested that if the Committee was truly uncomfortable with that, they could retain their own attorney.

Sen. Timberlake asked how many cases are won by the minority side of the AG's office, or the side with less people working the case.

CDAG Taub answered that this case is not resource intensive, so he felt that there was no disadvantage for it to be one attorney versus a group of other attorneys.

Rep. Millett stated that he supported the motion and the letter that Sen. Keim proposed. He stated that both of the strategies could produce a result that would benefit the GOC's work going forward. He stated that the court will address the issue of the statutory clarification as to whether the GOC could be considered Legislative Officials with responsibility to Child Protection. The determination and response may be helpful if there is a need for statutory amendments in the 131<sup>st</sup> Legislative Session. He thought that the letter would help. He stated that Child Protection has been a topic of concern since the OPEGA statute was written.

Sen. Bennett stated that Rep. Millett made an excellent point, that there is an underlying notion of the Executive Branch deciding for the Legislature, regarding our internal functioning and what topics various committees within the Legislature choose to address. He stated that it is a separation of powers issue. He asked if the Attorney General himself has taken the position that Mr. Taub was the only resource allocated to the committee, and that he has no one to talk strategy with in that office.

CDAG Taub answered that he did not know what the Attorney General's discussions have been with the attorney who is representing the department. He clarified that he told the office that he did not feel he needed additional resources for this case. If he felt he needed them, the office would find a way to make that happen. But this case is not one that requires extensive resources.

Sen. Bennet questioned why it is the Committee's prerogative to hire their own attorney and not the department. He believed the Attorney General should be representing the people's branch of government.

CDAG Taub answered that the Attorney General's office is charged with representing all branches of government. There is a statutory and constitutional responsibility to represent the executive branch, as well. The Maine Supreme Judicial Court has said that there are conflicting obligations and sometimes they are addressed by creating a wall between the people addressing the different sides of the issues.

Sen. Bennett asked if Mr. Taub would be comfortable discussing strategy with the Attorney General himself.

CDAG Taub answered that he would not feel comfortable because they have the wall that would prevent that. The Attorney General is on the other side of the wall. He explained that if he felt there was some issue that he needed help with, that he would have a discussion with the Attorney General about whether there are people that have so far not been involved at all in the matter who could be put on his side of the wall. He stated that he hasn't felt like he needed the help. He has been a litigator for the AG's office for 20 years and is very comfortable handling this case.

Sen. Bennett stated that there should be an understanding at some point as to how the Attorney General makes these calls about how he himself is involved in cases and is making determinations about who to represent and his personal position.

Sen. Timberlake asked Sen. Libby what the timeline would be if the committee did decide to hire their own attorney.

Sen. Libby answered that he has not solicited an attorney for a legislative committee before, so he would defer to others who might have some knowledge on how that might be done.

CDAG Taub stated that it may be a matter that the Legislative Council would need to approve. Apart from funding, he could give the committee recommendations, but in terms of mechanics, and what would need to be done to actually pay for it, he did not know. He suggested that the Committee may be able to find a lawyer who would do it pro bono.

Sen. Libby stated that he was not in favor of the motion, as the statute is not clear and was crafted about 30 years ago, well before the GOC was ever conceived. He thought the most efficient and practical remedy for this ambiguity in the statute is to put a bill in for the next legislature making it crystal clear that the GOC has access to these files directly. He believed that was the cleanest and most straightforward way to get access to the files. The GOC currently wants to have a new authority it has not had before. He stated that trying to hire outside counsel and filing something with the Superior court, which is already overburdened with cases. He thought that was not a good use of time and resources. He nevertheless stated that as chair, he does have ministerial duties, and if the committee wishes, he would continue performing those ministerial duties without delay, in terms of signing off on documents.

### Committee Vote

**Motion:** To apply to the Superior Court to compel DHHS obedience with the subpoena issued by the committee. (Moved by Sen. Timberlake, Seconded by Rep. Arata, motion passed, vote 10 yes, 1 no.) (Sen. Bailey and Rep. Blier voted on the motion in the allowed time frame in accordance with the GOC's rules)

**Motion:** To send a letter to the Superior Court asking that this matter be expedited and explain the reasons for the importance of it, members agreeing will sign. (Moved by Sen. Keim, Seconded by Rep. Arata, motion passed by unanimous vote 11-0) (Sen. Bailey and Rep. Blier voted on the motion in the allowed time frame in accordance with the GOC's rules)

**Motion:** To delegate the Chairs and Leads authority to carry this matter forward and litigation decisions for the committee as needed. (Motion by Sen. Bennett, Seconded by Rep Fay, unanimous) (Sen. Bailey and Rep. Blier voted on the motion in the allowed time frame in accordance with the GOC's rules)

Rep. Millett asked CDAG Taub about the cases ongoing for the four children that died. He asked whether the committee would be able to have access to the court transcript that deals with issues that might fall within the purview of the problems the committee is trying to fix.

CDAG Taub answered that court transcripts are generally public documents and he did not know what would be reflected in the transcript that might inform the committee's analysis. He does not know if there are portions of the transcript that are designated as confidential because they deal with child protection matters.

Rep. Millett stated that it may not be helpful without actually seeing and getting an interpretive reading of where things went awry. He thought it would be a failure to not have access to that information. He asked if Director Schleck could look into whether or not the trial transcripts are available and to what extent they can be given to the GOC.

Director Schleck answered that he would look into that.

Rep. Arata noted that the original letter from the commissioner was concerned about interference with the trials. Now that one of the trials is over, she asked if it would be appropriate for them to allow the committee to see that file maybe by sending another letter.

Director Schleck stated that one prosecution has concluded by plea and is awaiting sentencing, and another is awaiting sentencing following a jury verdict. He shared that it was his understanding that the provision in statute by which DHHS releases a public summary now comes into play once any defendant is sentenced. He stated that the agency is most likely preparing their summaries to release, similar to the Marissa Kennedy and Kendall Chick cases. He would be following up with them to understand what additional information can now be made public.

Sen. Timberlake asked if the committee would be entitled to receive the internal documents of DHHS as he is concerned about who in DHHS was in charge of the custody chain. He is interested in how the system failed and how they let children go back to people that should never have been allowed. He asked if the committee or OPEGA would see that information.

Director Schleck confirmed that OPEGA now has the four full case files and are deeply reviewing every document and report. That is the best evidence where there can be questions of who did what, when it happened, how it happened and what did the manual say should have happened. OPEGA is working through that process parallel to what the committee is doing. He reminded that the question on the table in the subpoena litigation is whether the committee can have direct access or not, which is what the committee just voted to go to court about.

Sen. Timberlake reiterated that he thought that the committee nor OPEGA had information about who the caseworkers were and all the information that was transcribed between them.

Director Schleck confirmed that within the documentation OPEGA has, the names are all there.

Sen. Deschambault stated that she was not of the opinion of wanting to know who the caseworker was because they already know the offices. She stated she wouldn't mind knowing when the reports came in and how long those reports took before finding a caseworker. She wanted to know where it failed in the decision making.

Director Schleck answered that OPEGA is digging as deeply into it as possible. He explained that when OPEGA writes the reports, they have a draft, that by statute calls upon them to allow the agency to review and respond to the findings before finalizing. He reminded that because the legislature has given OPEGA special access to this type of information, they are still subject to the requirements that the agency is under to protect information as appropriate. He explained that even in the case where the committee would access this through the court proceeding, this doesn't transform that information into public information. It would still need to be in the context of looking at it in an Executive Session with all the protections that other laws govern.

Sen. Timberlake asked when the committee can expect a report from OPEGA with findings and facts to be presented to the GOC. He thought this would be priority over everything else.

Director Schleck answered that they may be an organizational meeting of the new GOC in January, but that a report could be set up for the February meeting.

Sen. Timberlake asked why it would take that long. He thought it would be done within a week or two. He did not understand why three months is a necessity at this point in time.

Director Schleck answered that there are four cases with extensive amounts of documentation. It is very important in terms of the processes to go through and make sure that OPEGA staff have adequately understood the facts and context in which they occurred, then do appropriate follow-up if there is something in the file that leads to more questions that cannot be answered by the documents themselves. It is very labor-intensive process and the number one in priority. He stated that they want to make sure to do the job correctly and give the committee the answers they are entitled to.

Sen. Timberlake found that very disheartening.

Sen. Libby clarified that this should not be a surprise to the Committee as this timeline was discussed at the last meeting.

Rep. Arata asked if OPEGA would have access to request documents about employees who may have simply been transferred to another department after a pattern of behavior or bad decisions.

Director Schleck stated that he thought that would be within the context of the current inquiry. OPEGA should be able to understand if there were human performance breakdowns and would be in a position to follow-up on that and ask the questions needed to provide answers, if necessary.

Sen. Libby asked if there were any other actions the committee needs to take with respect to the enforcement of the subpoena.

Director Schleck and CDAG Taub both answered no. CDAG Taub stated that he has his task and will be in touch with the Chairs and Leads soon with a draft of the filings. Once they are signed, the filing will be made. He added that the committee is separately going to send a letter to the Superior court.

## **Unfinished Business**

None.

## Director's Report

Director Schleck reiterated that OPEGA is fully engaged in working through every document, recording and piece of evidence in the four child protection case files in as expeditious a manner as possible. There will be conclusions regarding where the agency intersected with the lives of the four children.

## Next GOC meeting date and planning

Sen. Libby stated that the Committee had scheduled a November 2022 meeting originally, but as far as the work plan goes, the Committee had cleared the deck. He summarized that the committee had authorized the Chairs and Leads to carry the Superior Court filing forward. He stated he was not aware of a compelling reason to meet in November.

Sen. Keim stated that she also did not see a reason to meet in November but thought it was difficult to pull everyone together if there is not already a meeting scheduled. She suggested holding a tentative meeting date and potentially cancel if there is nothing to meet about.

Sen. Libby asked Director Schleck to speak on the notice requirement for the chairs to call a meeting.

Director Schleck agreed that it would make more sense to hold the meeting as a placeholder.

Sen. Libby clarified that he was asking how many days would be needed for notice of a meeting.

Director Schleck believed it was seven days.

Sen. Libby asked Sen. Keim what kind of circumstance she felt would require the committee to reconvene.

Sen. Keim answered that it would be for if the committee happened to get records, or if there were some sort of court filing issue that the Committee needed to vote on. She stated that she had thought that the OPEGA staff had looked up that there was not a notice requirement (to hold a meeting) unless it was a public hearing. She suggested putting November 16<sup>th</sup> on the calendar as a tentative meeting that could be cancelled if nothing comes up.

The next Government Oversight meeting is tentatively scheduled for November 16, 2022 at 9:00 AM.

Sen. Libby added that he had to object to the notion that the committee has unnecessarily delayed the review of OCFS as suggested over the past few months and that the committee is somehow derelict in its duties and not doing everything it can to analyze the issues around protective services.

Sen. Keim clarified that she was referring to the fact that the committee did not have OPEGA request the records, and did not realize they had not done that for four weeks. Then when the committee decided to issue a subpoena they waited another four weeks before deciding to move forward with court.

Sen. Libby stated that they received the rejection of the subpoena two weeks after having asked for the documents. It had now only been two weeks since the denial of the subpoena. He felt they have moved as quickly as they can as a body of twelve.

## Adjourn

The Chair, Sen. Libby, adjourned the Government Oversight Committee meeting at 10:10 AM on a motion by Sen. Bennett, Second by Rep. Stover.