

MAINE STATE LEGISLATURE

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**2012 Annual Report of the
Maine Regulatory Fairness Board**

to

The Joint Standing Committee on Labor, Commerce, Research and Economic Development

and

The Honorable Paul R. LePage, Governor of Maine

Pursuant to 5 MRSA §90-T

Contents

Executive Summary	Page 2
Introduction	Page 3
Regulatory Fairness Board Activity and Recommendations	Page 4
<u>Appendix A:</u> Public Law Chapter 304 (applicable section)	Page 14
<u>Appendix B:</u> Public Hearing and Meeting Notices, Agendas, Minutes and Testimony	Page 18
<u>Appendix C:</u> Memos and Report from the Small Business Advocate (staff person) to the Board	Page 19
August 8 memo regarding shellfish testing	
September 20 memo regarding shellfish testing	
November 14 memo regarding cosmetology booth licensing written testimony	
December 12 memo regarding cosmetology booth licensing	
December 20 report regarding 2012 testimony synopsis and Board action	
<u>Appendix D:</u> Letters from the Board Chairman	Page 31
January 10 to Labor, Commerce, Research and Economic Development Committee	
May 16 to Labor, Commerce, Research and Economic Development Committee	
May 17 to Governor Paul R. LePage	
May 17 to Department of Health & Human Services Commissioner Mary Mayhew	
<u>Appendix F:</u> Summary of the work of the Small Business Advocate from October 2011 to October 2012	Page 36
<u>Appendix F:</u> Regulatory Fairness Board Members	Page 41

Executive Summary

The Regulatory Fairness Board is comprised of members who are or have been owners, operators, or officers of businesses operating throughout the State to hear testimony concerning regulatory processes, interactions, and roles between businesses and government agencies. This report summarizes the Board's activities during the year 2012 including information presented to the Board, and its resulting recommendations. The section of public law that directs the Board's requirements and activities may be found in Appendix A.

During 2012, the Board held two public meetings and three public hearings. A link to the Board's webpage is included in Appendix B, where the meeting and hearing announcements, agendas, minutes, and testimony is available for public viewing.

For ease of reference, this report provides a brief synopsis of this testimony that includes summaries of any action taken. The Board acted on certain regulatory issues by instructing its staff to conduct research and contact stakeholders. This synopsis and research memos may be found in Appendix C. The Board Chairman, Secretary of State Charles E. Summers, Jr., sent letters to various offices in Augusta summarizing certain pertinent testimony. These letters may be found in Appendix D.

Among the issues commonly identified by constituents via oral and/or written testimony are:

1. Conflicts between federal, state, and local rules and regulations create compliance confusion
2. Cumbersome and complex regulatory compliance requirements create business sustainability challenges
3. The cost and time required to secure certain business licenses create undue burdens
4. The cost of certain fees and leases are rising steeply at a time when businesses must compete nationally and internationally
5. Liquor and gaming laws are prohibiting new business practices at a time when increasing public smoking restrictions and sprinkler requirements are inhibiting business
6. Storm water and air emission control regulations present difficult and costly compliance challenges

To improve the overall knowledge of compliance requirements and enhance cooperation between state regulators and regulated entities, the Board urges the Governor and the 126th Legislature to consider acting upon two specific recommendations. 1) State regulators and industry associations should use existing meeting structures for informational forums. This will allow regulators and small businesses to educate each other about the variety of issues with current regulations.

2) State regulatory agents should be required to make appointments when meeting with a business owner/manager at their place of business for their initial meeting.

Introduction

The Maine Regulatory Fairness Board (RFB) holds public hearings and meetings to listen to public testimony from small businesses and business association on regulatory and statutory issues that negatively impact Maine businesses. The RFB seeks public comment from business owners and managers on:

- ◆ Specific state rules and regulations that may unreasonably impede business sustainability and growth; and
- ◆ Recommendations for regulatory and statutory change that may enhance Maine’s business climate.

These public comments directly set the hearing agendas and greatly inform the Board’s recommendations to the Governor and the Legislature. Public participation is thus an essential element to achieving the Board’s goals and objectives.

In 2012, the Board held three public hearings in Augusta, Ellsworth and Portland in order to hear from a broad spectrum of businesses across the state. The Board announced these hearings via news releases and websites to attract those who wish to present their perspectives on pertinent topics. The Board also held two public meetings in Augusta where it weighed public comments and reviewed the work of the Small Business Advocate in addressing complaints brought forward by businesses.

HISTORY

The 122nd Legislature first created the Maine Regulatory Fairness Board in 2005. Until 2011, the RFB was housed within the State Planning Office. The Regulatory Fairness Board was reconstituted under the Office of the Secretary of State by the 125th Legislature within Sec. A-1. 38 MRSA c. 2, sub-c. 1-A (PL Chapter 304): “An Act To Ensure Regulatory Fairness and Reform” (see pertinent section in *Appendix A*). This legislation was approved in a bipartisan vote and signed into law by Governor Paul R. LePage on June 13, 2011. This same legislation also created the Office of the Small Business Advocate (“Special Advocate”) within the Office of the Secretary of State.

The Board is chaired by the Secretary of State and is comprised of four members who are or have been owners or operators of Maine businesses. It is staffed by Maine’s Small Business Advocate. One member is appointed by the President of the Senate, one member is appointed by the Speaker of the House, and two members are appointed by the Governor, one of whom represents businesses with fewer than 50 employees and another who represents those with fewer than 20 employees. Private sector members of the Board volunteer their time and their

unique expertise to serve as liaisons between the State's business community, regulatory authorities, and lawmakers. Board members serve one to three-year terms and may serve up to three consecutive terms.

Regulatory Fairness Board Activity

The Board convened its first meeting on January 6, 2012, at the Office of the Secretary of State, 103 Sewall St., Augusta. This meeting was organizational in nature.

The Board convened three public hearings in 2012:

- February 24, Office of the Secretary of State, 103 Sewall St., Augusta
- June 29, Ellsworth Middle School, 20 Forrest Avenue, Ellsworth
- November 16, Portland Public Library, 5 Monument Square, Portland

To encourage participation, the Board announced and promoted each public meeting and hearing through news releases, calendar listings, email alerts, and personal presentations to various business and community groups by its staff. At each hearing, the Board received written testimony and heard oral testimony from Maine business owners/managers and industry leaders regarding Maine regulatory compliance challenges, and suggestions for amending regulations to improve the state's business climate. The Board also received and considered written testimony between hearings.

At some hearings, state economic development staff and state regulatory staff attended to listen to testimony and respond to questions from the Board. Live audio of each hearing was broadcast via the Internet and listeners were encouraged to email their questions and concerns to the Board. Agendas and minutes for each meeting and hearing are posted on the Board's webpage.

The Board convened its final meeting of 2012 on December 20 at the Office of the Secretary of State. Prior to this meeting, members were provided a synopsis of 2012 testimony and action taken to date that they reviewed and discussed at this meeting with the goal of developing recommendations for inclusion within its report to Governor LePage and the 126th Legislature. (Please see Appendix D: *December 20 report regarding 2012 testimony synopsis and Board action.*)

2012 Testimony Synopsis

February 24th Public Hearing Oral/Written Testimony

Mr. Richard Grotton, President of the Maine Restaurant Association, presented a summary of regulatory concerns and challenges facing Maine's restaurant industry:

- Rulemaking by agency is in essence a "hidden legislature" adding burdens on businesses
- Labor laws are extensive and complex
- State and federal laws are too often in conflict
- Maine's child labor laws are among the most restrictive in the nation

- There exist too many state licenses, adding significantly to business costs
- Liquor license requirements are particularly onerous
- Music license fees are required from performance art unions such as ASCAP when playing recorded music, adding additional costs

Mr. Greg Dugal, Executive Director of the Maine Innkeepers Association, summarized the following points for the Board:

- The business climate is improving; processes could be consolidated to improve speed
- The Department of Economic and Community Development Account Executives are doing a great job helping businesses
- There are too many conflicts between the State Fire Marshal's Office and town officials regarding the National Fire Safety Code
- State and local requirements should be streamlined, as businesses are too often held hostage to two sets of interpretations

Ms. Catherine Weare, owner of The Cliff House in Ogunquit, offered testimony regarding life safety code compliance conflicts between state and local officials. In summary, Ms. Weare feels aggrieved by one of the Town of York's two fire chiefs who demanded that she update the fire alert systems at her inn. She has achieved a compromise at a cost of \$30,000 but is concerned about future action against her and other business owners.

Representative Brad Moulton offered testimony in support of **Ms. Weare's** testimony. He said that there exists a problem in the relationship between local fire departments and the State Fire Marshal's office, especially when addressing issues such as ingress/egress, fire extinguishers, the Americans with Disabilities Act, and other regulations. New fire chiefs referring to the Life Safety Code are not properly referring to the State Fire Marshal. He encourages this Board to look at this relationship. As over 200 businesses are inspected each year, insisting that each meet current standards would create tremendous hardship. He assured the Board that **Ms. Weare** has made a significant investment into her facility to offer visitors to this state an excellent and safe facility.

Action: On May 17, **Secretary Summers** sent **Governor LePage** a letter summarizing this testimony.

Dr. Emmanuel Amoah, a dental surgeon from Glenburn, offered testimony regarding his difficulty obtaining a Maine dental license. He said he received his undergraduate dental degree from the University of Ghana in 1999 where he ultimately served as the head of its dental department. He completed post-graduate work at the University of Pennsylvania and the University of Connecticut, and worked for three years as a licensed dentist at a clinic in Connecticut serving thousands of people.

Update: Rather than pursue a dentist license to practice in Maine, Dr. Amoah has moved to Virginia to practice dentistry there.

The following people offered testimony regarding water treatment equipment installation and testing: **Mr. David Loveday** and **Ms. Tonya Lubner** of the Water Quality Association (WQA) based in Illinois; **Mr. Dan Cote** of Aquamax in Lewiston; **Mr. Kevin Kaserman** of Dunbar Pumps in Wells; and **Mr. Eric Wilson** of The Water Doctors in Bath. Each indicated that the current professional license and job permitting system is inadequate, and voiced support for a new

water quality technician licensing system similar to those established in three other states to ensure that water treatment equipment is properly installed and inspected.

Action: On May 16, **Secretary Summers** sent a letter summarizing this testimony to **Senator Christopher Rector**, Chairman of the Labor, Commerce, Research and Economic Development Committee.

The following people offered testimony regarding Maine's medical marijuana law: Mr. **John Stewart**, Ms. **Catherine Lewis**, and Mr. **Justin Denison** of the Maine Medical Marijuana Caregivers Association. Each testified in support of lowering their per-patient annual fees, and allowing plants to be grown out of doors.

Action: On May 16, **Secretary Summers** sent a letter summarizing this testimony to **Department of Health and Human Services Commissioner Mary Mayhew**.

Mr. Justin Denison offered further testimony regarding the commercial fishing industry. He has had great difficulty getting a lobster fishing license in Maine, and believes the lobster apprenticeship program discriminates against non-family related potential licensees.

June 29th Public Hearing Oral/Written Testimony

The following two people testified in support of amending Maine's shellfish testing protocols.

Ms. Darcie A. Couture a former director of the Department of Marine Resources' red tide monitoring program. She owns and operates Resource Access International, LLC, in Brunswick, a private lab certified by the U.S. Food and Drug Administration (FDA). She said that Maine should consider using private labs such as hers to conduct shellfish safety testing rather than rely on the Department of Marine Resources' labs as private labs can complete this work more efficiently and effectively and at lower cost. She does not believe current state statutes would prohibit privatization of lab activities. She asked the Board to consider conducting an independent review to establish whether privatization of certain services assigned to state employees is warranted.

Mr. Bruce Chamberlain is a former head of the shellfish plant sanitation program for the Maine Department of Marine Resources (DMR) and a current consultant for Maine shellfish dealers. He said that Maine shellfish dealers using the state's previous "multi-tube" testing method are now failing tests using the new "membrane filtration" method adopted by the state. He said this puts shellfish dealers at risk of losing hundreds of thousands of dollars. He suggested that: 1) DMR should revert to the multi-tube testing method temporarily; and 2) the membrane filtration testing method standard should be recalibrated and re-submitted to the federal standards organization in the fall of 2013.

Action: As directed by the Board, staff member **Jay Martin** researched this matter by reviewing literature and discussing this issue with a cross-section of shellfish stakeholders. He shared his findings with the Board in two memos dated August 8 and September 20. (Appendix

Mr. Eric Mihan is the owner of Bangor Wine and Cheese Co. in Bangor. He is seeking assistance from the Board to be allowed to repackage keg beer brewed by other companies into 64 ounce bottles ("growlers") for retail off-premise sale. His proposal has been denied by the Department of Health and Human Services (DHHS) Liquor Licensing Division. He cited certain statutory clauses that he believes should allow him to conduct this business practice. His written

testimony also includes a letter from numerous legislators to DHHS asking that the department explore Mr. Mihan's proposal with him to make this idea a reality.

Action: **Jay Martin** researched this matter and learned that the pertinent law, when considered in full context, expressly forbids such business practices to any companies other than the original brewers of the product. He said that Maine liquor law is structured so that if a business practice is not expressly allowed by law, then it is considered disallowed. He discussed this matter with Mr. Mihan's legislators, **Representative Adam Goode** and **Senator Nikki Farnham**, who said they will work with Mr. Mihan to consider their steps.

November 16th Public Hearing Oral/Written Testimony

Ms. Susan Swanton, Executive Director of the Maine Marines Trades Association said that regulatory obstacles facing the marine trades sector include lack of a skilled workforce, regulatory compliance, high tax and insurance costs, and ethanol-related problems. Her members believe a balance needs to be achieved between state/federal regulatory burdens that involve health/safety and the environment and the costs imposed by regulators for compliance failures. She said the Department of Environmental Protection is under pressure from the Environmental Protection Agency to enforce air emissions regulations that may cause damage the marine industry cannot bear. She said the Department of Conservation Bureau of Parks and Land's Submerged Lands Lease Program compels owners of these facilities to have very expensive lease agreements with the state under a law that is complex, confusing, and inequitable. She urged the Board to look into this matter and to consider pursuing any opportunities to improve inter-agency coordination and simplification.

Action: **Mr. Smith** requested that **Ms. Swanton** provide the Board the specific regulations needing to be addressed, and she agreed to provide them. **MMTA** is currently polling its members to identify the cost of compliance with certain state regulations.

Mr. Patrick Strauch, Executive Director for the Maine Forest Products shared success stories, saying that communities in the Unorganized Territories are coming together to work on economic development issues. He said certain oversimplified regulations fail to consider the complexity of forest ecosystems such as the Maine Forest Practices Act which limits clear-cuts, yet this is preferred habitat of snowshoe hare, a source of food for Canadian lynx. Other regulatory concerns include laws mitigating impacts to scenic and aesthetic uses, taxation rates in the Unorganized Territories, and inconsistent Tax Increment Financing programs.

Ms. Brenda Peluso, Public Policy Director for the Maine Association of Nonprofits (MANP) said that this sector's capacity is diminishing in light of the state's financial condition, with 32% of Maine's nonprofits reporting deficits and 20% reporting layoffs. Cuts in government spending are understandable, she said, yet a focus on reducing inefficiencies and cumbersome requirements could channel scarce resources in service to mission. MANP and DHHS convened a committee that formed 64 recommendations for streamlining and simplifying the agency's nonprofit contracting system, with four prioritized, that benefit the state and nonprofits.

Action: **Secretary Summers** encouraged **Ms. Peluso** to continue working with **Jay Martin**, and she agreed.

Mr. Frank Draus is a self-employed landlord in Houlton. He has worked with legislators and has complained to the Attorney General's Office and **Governor LePage's** office regarding Maine

laws that allow tenants to avoid paying rent in arrears. He suggests a law could be established whereby rent in arrears could be collected and placed in escrow. He believes such tenants should be charged with theft of services and/or theft by deception. He said that tenants are receiving many items and services free of charge while he works seven days a week to meet expenses. He said that he believes landlord trade associations are afraid to directly confront this issue.

Ms. Jamie Clark owns and operates the Levant Corner Store with her husband. She is seeking an on-premise alcohol license for her in-store restaurant. Her application was denied, as the Bureau of Alcoholic Beverages and Lottery Operations indicated she must first separate her restaurant from her retail operations with an interior wall, and install a second entrance for her restaurant patrons. This modification would require a separate cash register desk and inhibit restaurant patrons from making purchases in the retail store. She has invited various legislators to tour the building and they agree that such modifications are not practical for her business. She views this as an example of state over-regulation.

Action: **Secretary Summers** encouraged **Ms. Clark** to work with **Jay Martin**; she agreed.

Mr. Raymond Rodrigue and his brother own and operate Crystal Falls dance hall in Chelsea. The State Fire Marshal's office requires that they install a sprinkler system, but he says that non-profit dance halls are not subject to such regulations. He said that his operation has never had any serious safety violations and his building is especially well designed for public safety, with numerous exits and updated wiring. The ban on public smoking and a slumping economy has reduced his profit margins. He requests the assistance of Board to help him stay in business.

Mr. Richard McCarthy of the Maine State Fire Marshal's Office was in attendance to respond to questions from the Board. He said that issues regarding sprinkler systems involve major substantive rulemaking. These requirements changed in response to the 2003 Rhode Island nightclub fire, now requiring any business exceeding 100-person occupancy to install sprinklers, and the State Fire Marshal's Office allowed businesses five years to come into compliance. He said of the businesses cited five years ago for needing sprinkler systems, 25 are now in compliance. Some of these reduced their occupancy capacity below 100. The code does not consider whether a facility has additional exits in determining the need for sprinklers. His office wrote an exception for private clubs that offers events only to their members, not the general public. If a private club rents to the general public or should members bring guests, then the building must have a sprinkler system. He said he is happy to work with the owners to find a solution.

Ms. Julie O'Brien is the owner of a hair salon where self-employed licensed cosmetologists rent their booth space. To work at any licensed salon, these cosmetologists must acquire a booth license form the Board of Barbering and Cosmetology. Ms. O'Brien said that when she opened in 1990, applicants could drop off their applications in Augusta and she would receive a call from the licensing office the next business day granting permission for them to begin work. This year one renter was told it now would take three weeks. She said that such delays create problems for her business. She knows of no other licensed profession that requires a similar additional license. She said that with today's technology, applicants should be able to submit their applications online with payment and be able to begin work immediately while the licensing department completes its work. She said that applicants can print applications from the website but cannot yet have them processed online.

Action: **Mr. Smith** asked **Jay Martin** to research this matter. On December 12, he provided the Board a memo summarizing his discussion with **Department of Professional and Financial Regulation Commissioner Anne Head**.

Mr. Ken Porter and his wife run a part-time concessions stand from June through September, and they renew their license each January. The license fee has risen to \$175 from \$60. He said that this and other rising costs are making it difficult for him to stay in business. He is competing with non-profit businesses that are not subject to his level of taxation and regulation, and this creates an unfair business climate.

Action: **Secretary Summers** suggested to **Mr. Porter** that he work with **Jay Martin** to provide the Board with more information about this matter, and he agreed.

Ms. Susan Howland is the CEO and CFO of Wayfayer Marine Corporation Camden. She said that running a small business in compliance with the numerous rules, laws, and regulatory agencies is challenging. In 2008, the state's Submerged Lands Lease Program administered by the Bureau of Parks and Lands removed its lease cap of \$1,200, phasing in increases to where she paid over \$10,000 this year, and will ultimately pay \$14,000/year. She said that this seems to be an unnecessary and unfair tax that offers no value to the waterfront community, so it should be eliminated. She said that the Department of Environmental Protection is considering implementing a new rule that will calculate the level of air emissions based upon the amount of spray paint equipment businesses have on hand, and that such "one-size-fits-all" rules harm her business. She said current sales and use taxes encourage boatyard customers to take out of state the work they need done; for example, when a customer purchases a boat and leaves the state with it within 30 days, they are not required to pay sales taxes. She said that these policies are shortsighted in light of the economic multiplier effects.

Action: **Jay Martin** is currently researching the Submerged Lands Lease Program and DEP's air emissions requirements.

Mr. Frederic Licht and fellow attendee **Mr. Steve Blais** are practicing professional engineers who offered testimony on behalf of the Maine Real Estate and Development Association (MREDA). He said the Site Location of Development Act regulates all large development projects, and storm-water rules are intertwined. Though their industry encourages development in areas previously developed, storm-water rules require complete storm-water mitigation even when changing from one type of impervious surface to another (for example, from gravel to pavement). He said that this rule discourages development in downtown areas and encourages sprawl.

Action: **Mr. Smith** asked **Jay Martin** to determine the status of the Department of Environmental Protection's storm-water stakeholder group. Mr. Martin learned that this stakeholder group is reconvening and provided Mr. Licht the contact information.

Mr. and Ms. John and Gina Martinez own and operate two businesses, including a lounge, in Old Orchard Beach, and belong to a local economic development organization. They said that many factors are making it more difficult to earn money; meanwhile their costs are rising dramatically. Regulatory issues include: smoking rules, sprinkler requirements, signage limitations, staff training requirements, limited hours of operation, and games of chance prohibitions. Cost issues include: music union fees, liability insurance costs, and alcohol costs. Ms. Martinez works as a licensed dietician and is required to complete 10 continuing education

units (CEUs) She said that registered nurses have no CEU requirements, despite much higher incomes. They said the state could benefit from certain opportunities, but it is worried that businesses will be out of compliance. With the revenues earned, the state could hire inspectors who could close those businesses that fail to comply.

2012 Written Testimony Only

The following people offered written testimony in support of making changes to Maine's lobster fishing licensing system: **Mr. John Butler** of Scarborough, **Mr. Howard J. Gray** of Scarborough, and **Ms. Sheila Dassatt**, Executive Director of the Downeast Lobsterman's Association.

Action: On October 4, **Secretary Summers** sent a letter to the Gulf of Maine Research Institute enclosing this testimony. The Institute was contracted by the Department of Marine Resources this year to conduct an independent evaluation of the existing limited entry system for the lobster fishery. The report may be found here:

<http://www.maine.gov/dmr/GMRIReportRelease.htm>

The following people offered testimony in support of improving the timeliness of barber/cosmetologist booth licenses: **Elizabeth Hall**, cosmetologist; **Angelica Barrett**, owner, Trend Setters Salon, Falmouth; **Holly Whitmore**, owner, Hair & Company, Brewer; **Lynne Cox**, cosmetologist, former establishment owner and booth renter; **Janet T. Thiboutot**, owner, As You Wish, Portland; **Maurice Landry**, owner, Moe's Styling, Lewiston; **Patricia King**, owner, Mikayla J's Salon, Eliot; and **Linda Stevens**, owner, Natural Look Beauty Salon, Palmyra. **Jay Martin** provided the Board this testimony in a memo dated November 14th.

Action: On December 12, Mr. Martin provided the Board a memo summarizing his discussion with **Department of Professional and Financial Regulation Commissioner Anne Head**.

Jeff and Kayli McKeen own Waldo Stone Farm in Montville. They produce 2,000 units per year of a bottled non-alcoholic Bloody Mary mix subject to Maine's bottle redemption law. In Maine, brewers and water bottlers of fewer than 50,000 units per year are provided a consideration with their fee set at only \$50/year, whereas those companies exceeding this level pay \$500/year. The McKeens would like their product to be considered within this exemption as they find the \$500 fee to be unreasonable in light of their production volume. The McKeens say that at least one other Maine bottler would benefit from such an adjustment.

Action: **Jay Martin** contacted the person who oversees this program and the Maine Food Producers Alliance. The Alliance intends to work with the McKeens and the 126th Legislature to have their product included within the list of products qualifying for the \$50 annual fee.

Mr. Roland Lawlor owns XATel in Biddeford, a small competitive local exchange carrier (CLEC). He says that Verizon has overbilled him for nearly \$250,000. The Maine Public Utilities Commission (MPUC) informed Mr. Lawlor's customers that they would be disconnected and placed an embargo against XATel for new business. As a result, his business declined significantly. He believes that MPUC should not be allowed to order such disconnect notices, and that companies such as Verizon should be compelled to reveal it's pricing before any contracts are signed.

Mr. Scott Nelson is a licensed professional forester in Dover-Foxcroft. He believes inequities exist in Maine’s Timber Liquidation Law. He says some timber businesses are long-term focused, while those with a short-term focus must continually acquire new land as standing timber does not pay for the woodlots. He says that state criteria are not always possible for such harvesters to meet and remain viable.

Mr. David Orbeton of South Portland owns Wicker Sharp, a blade sharpening business. He says such businesses are excluded from selling at farmer’s markets, as only agricultural products are allowed. He believes he offers a valuable service to customers who can have their blades sharpened while they shop.

Small Business Advocate

In addition to the work of staffing the Regulatory Fairness Board, the Small Business Advocate assisted 19 businesses since October 6, 2011. This summary indicates the businesses that formally requested the assistance of this office, and we played a role in helping them as appropriate. In addition, this office has processed the following:

- 38 Cases Never Opened. This figure indicates those businesses that contacted our office with inquiries but never submitted a formal request for our assistance.
- 15 Cases Outside of Scope. This figure indicates those businesses that sought our help but we were unable to assist them as their request fell outside the scope of this office.
- 45 Cases Referred. This figure indicates cases that we determined were outside the scope of this office, yet we were able to connect them with other agencies and organizations to provide assistance.

Outreach to the small business community is an essential part of the job of the advocate. This past year, the Small Business Advocate also engaged in outreach and made presentations at ten organizations and appeared on several radio shows, talking about the assistance the office can provide small businesses.

RECOMMENDATIONS

A common theme found in much of the testimony offered to the Board this year indicates a strong desire by business owners and operators that all parties involved with achieving state regulatory compliance are fully aware of the statutes, rules and regulations to maximize compliance and cooperation. Instead of an emphasis of “catching us doing something wrong”, business owners/managers say they would prefer an emphasis on working together to understand and comply with often complex, extensive, and revised state regulations. This finding is consistent with previous Regulatory Fairness Board Reports.

The Board believes that these recommendations, should they be enacted, will reinforce essential regulatory fairness.

Recommendation 1:

Regulatory enforcement and compliance needs to be more consistent enforced between state and local regulators. There are multiple regulations enforced on both the state and local level. One of these brought forward this year was local Fire Marshalls taking on some of the responsibilities formerly done by the State Fire Marshall's Office. The enforcement of different fire prevention standards at the state and local level made it difficult for Cliff House in Ogunquit to comply and get re-licensed by the town. While this issue was resolved, it is clear that there needed to be consistent standards and communications between the State and the Local enforcement agencies. All parties involved with regulatory compliance need to have the same access to information in the same format, otherwise it is very difficult and confusing for business owners to meet regulatory requirements.

The Board recommends that both state regulators and industry associations use their existing meeting structures to formalize and create forums where members and small businesses can educate each other about the variety of issues with current regulations. While some regulators conduct outreach to the industry and small businesses, formalizing this process to at least a once a year presentation would assist both small businesses and regulatory state agencies create a less adversarial relationship.

Industry Associations meet on a regular basis, providing an opportunity to connect small businesses with regulatory personnel. These meetings could facilitate greater understanding on both the small businesses and regulators part on the challenges involved in regulation and regulating. Additionally, when State and local regulatory officials meet for training or continuing education, a session should be dedicated to talking with business or trade associations. Creating non-adversarial opportunities for small businesses and their associations to talk with regulators can help minimize the adversarial climate that occasionally pervades relationships between the regulators and the regulated.

Recommendation 2:

When making routine inspections, state regulatory agents should be required to make appointments when meeting with a business owner/manager at their place of business for their initial meeting. The Board does recognize the need for unannounced inspections, especially in the case of public health and safety inspections. In these cases, inspectors should make every effort not to conduct the inspections at the busiest time of day. For example, inspections of restaurants should not happen at the lunch rush.

If regulatory agents encounter business owners/managers who act in a recalcitrant manner despite the agents' efforts to inform them of requirements, then unannounced meetings for the purpose of conducting spot inspections should be considered as appropriate. This approach would accomplish two common objectives identified in testimony:

- 1) Business owners/managers can adequately plan for such meetings so they are not taken away from conducting their important tasks including customer service, sales, and employee supervision.
- 2) Such initial meeting appointments can be expected to motivate business owners/managers to prepare for such meetings to their best ability, when they are

offered adequate time to fully research and achieve compliance requirements. Establishing such an environment of cooperation is critical to achieving consistent and comprehensive regulatory compliance.

Appendix A: Public Law Chapter 304 (applicable section)

PART D

Sec. D-1. 5 MRSA §57, as amended by PL 2007, c. 676, §1, is repealed.

Sec. D-2. 5 MRSA c. 5, sub-c. 2 is enacted to read:

**SUBCHAPTER 2
SPECIAL ADVOCATE**

§ 90-N. Bureau established

The Bureau of the Special Advocate, referred to in this subchapter as "the bureau," is established within the Department of the Secretary of State to assist in resolving regulatory enforcement actions affecting small businesses that, if taken, are likely to result in significant economic hardship and to advocate for small business interests in other regulatory matters.

§ 90-O. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Agency.** "Agency" has the same meaning as set out in section 8002, subsection 2.
- 2. Agency enforcement action.** "Agency enforcement action" means an enforcement action initiated by an agency against a small business.
- 3. Complaint.** "Complaint" means a request to the special advocate for assistance under section 90-Q.
- 4. Regulatory impact notice.** "Regulatory impact notice" means a written notice from the Secretary of State to the Governor as provided in section 90-S.
- 5. Significant economic hardship.** "Significant economic hardship" means a hardship created for a small business by a monetary penalty or license suspension or revocation imposed by an agency enforcement action that appears likely to result in the:
 - A. Temporary or permanent closure of the small business; or
 - B. Termination of employees of the small business.
- 6. Small business.** "Small business" means a business having 50 or fewer employees in the State.
- 7. Special advocate.** "Special advocate" means the person appointed pursuant to section 90-P.

§ 90-P. Special advocate; appointment and qualifications

The Secretary of State shall appoint a special advocate to carry out the purposes of this subchapter. The special advocate shall serve at the pleasure of the Secretary of State.

§ 90-Q. Small business requests for assistance

A small business may file a complaint requesting the assistance of the special advocate in any agency enforcement action initiated against that small business. The special advocate may provide assistance to the small business in accordance with section 90-R, subsection 2. The special advocate shall encourage small businesses to request the assistance of the special advocate as early in the regulatory proceeding as possible. Before providing any assistance, the special advocate shall provide a written disclaimer to the small business stating that the special advocate is not acting as an attorney representing the small business, that no attorney-client relationship is established and that no attorney-client privilege can be asserted by the small business as a result of the assistance provided by the special advocate under this subchapter.

§ 90-R. Powers and duties of the special advocate

1. General advocacy. The special advocate may advocate generally on behalf of small business interests by commenting on rules proposed under chapter 375, testifying on legislation affecting the interests of small businesses, consulting with agencies having enforcement authority over business matters and promoting the services provided by the special advocate.

2. Advocate on behalf of an aggrieved small business. Upon receipt of a complaint requesting assistance under section 90-Q, the special advocate may:

- A. Consult with the small business that filed the complaint and with the staff in the agency that initiated the agency enforcement action to determine the facts of the case;
- B. After reviewing the complaint and discussing the complaint with the small business and the agency that initiated the agency enforcement action, determine whether, in the opinion of the special advocate, the complaint arises from an agency enforcement action that is likely to result in a significant economic hardship to the small business;
- C. If the special advocate determines that an agency enforcement action is likely to result in a significant economic hardship to the small business, seek to resolve the complaint through consultation with the agency that initiated the agency enforcement action and the small business and participation in related regulatory proceedings in a manner allowed by applicable laws; and
- D. If the special advocate determines that an agency enforcement action applies statutes or rules in a manner that is likely to result in a significant economic hardship to the small business, when an alternative means of effective enforcement is possible, recommend to the Secretary of State that the secretary issue a regulatory impact notice to the Governor.

§ 90-S. Regulatory impact notice

At the recommendation of the special advocate, the Secretary of State may issue a regulatory impact notice to the Governor informing the Governor that an agency has initiated an agency enforcement action that is likely to result in significant economic hardship to a small business, when an alternative means of enforcement was possible, and asking that the Governor take action, as appropriate and in a manner consistent with all applicable laws, to address the small business issues raised by that agency enforcement action. The regulatory impact notice may include, but is not limited to, a description of the role of the special advocate in attempting to resolve the issue with the agency, a description of how the agency enforcement action will

affect the interests of the small business and a description of how an alternative enforcement action, when permitted by law, would relieve the small business of the significant economic hardship expected to result from the agency enforcement action. The Secretary of State shall provide a copy of the regulatory impact notice to the agency that initiated the agency enforcement action, the small business that made the complaint and the joint standing committee of the Legislature having jurisdiction over the agency.

§ 90-T. Regulatory Fairness Board

The Regulatory Fairness Board, referred to in this section as "the board," is established within the Department of the Secretary of State to hear testimony and to report to the Legislature and the Governor at least annually on regulatory and statutory changes necessary to enhance the State's business climate.

1. Membership. The board consists of the Secretary of State, who shall serve as the chair of the board and 4 public members who are owners, operators or officers of businesses operating in different regions of the State, appointed as follows:

- A. One public member appointed by the President of the Senate;
- B. One public member appointed by the Speaker of the House;
- C. Two public members appointed by the Governor, one of whom represents a business with fewer than 50 employees and one of whom represents a business with fewer than 20 employees.

The Secretary of State shall inform the joint standing committee of the Legislature having jurisdiction over business matters in writing upon the appointment of each member. Except for the Secretary of State, an officer or employee of State Government may not be a member of the board.

2. Terms of appointment. Each member appointed to the board must be appointed to serve a 3-year term. A member may not be appointed for more than 3 consecutive terms.

3. Quorum. A quorum for the purpose of conducting the board's business consists of 3 appointed members of the board.

4. Duties of board. The board shall:

- A. Meet at least 3 times a year to review complaints submitted to the special advocate;
- B. Review the status of complaints filed with the special advocate and regulatory impact notices issued by the Secretary of State; and
- C. Report annually by February 1st to the Governor and the joint standing committee of the Legislature having jurisdiction over business matters on actions taken by the special advocate and the Secretary of State to resolve complaints concerning agency enforcement actions against small businesses. The report may also include recommendations for statutory changes that will bring more clarity, consistency and transparency in rules affecting the small business community.

5. Compensation. Board members are entitled to compensation only for expenses

pursuant to section 12004-I, subsection 2-G.

6. Staff. The special advocate shall staff the board.

Sec. D-3. 5 MRSA §12004-I, sub-§2-G, as enacted by PL 2007, c. 676, §2, is amended to read:

2-G.

Sec. D-4. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 5, chapter 5, before section 81, the headnote "subchapter 1, general provisions" is enacted and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. D-5. Transition provisions; Regulatory Fairness Board. The terms of members appointed to the Maine Regulatory Fairness Board under the former Maine Revised Statutes, Title 5, section 57 are terminated on the effective date of this Act. Notwithstanding Title 5, section 90-T, subsection 2, the initial terms of members appointed to the Regulatory fairness Board must be staggered as follows:

1. The member appointed by the President of the Senate shall serve an initial term of 2 years;
2. The member appointed by the Speaker of the House shall serve an initial term of 2 years;
3. The first member appointed by the Governor shall serve an initial term of one year; and
4. The 2nd member appointed by the Governor shall serve an initial term of 3 years.

Appendix B: Public Hearing and Meeting Notices, Agendas, Minutes and Hearing Testimony

Documents pertinent to the Regulatory Fairness Board, including Public Hearing and Meeting Announcements, Agendas, Minutes, and Hearing Testimony, may be found at this webpage:

<http://www.maine.gov/sos/sba/rfbmeeting.html>

Appendix C: Memos and Report from the Small Business Advocate to the Board

TO: Secretary of State Charles E. Summers, Jr., Mark Tyler, Patricia Kuhl, Doug Smith, Mike Cote

FROM: Jay Martin, Small Business Advocate

CC: Deputy Secretary Barbara Redmond, Deputy Secretary Lynn Harvey

RE: Regulatory Fairness Board Public Testimony Follow-Up

DATE: Wednesday, August 8, 2012

At the Regulatory Fairness Board public hearing on June 29, the Board heard and received written testimony from Ms. Darcie Couture and Mr. Bruce Chamberlain regarding shellfish food safety testing issues. Please see their written testimony, attached. Ms. Couture requests the assistance of the Board to encourage the state to consider privatizing some functions currently performed by the Department of Marine Resources' laboratories in Lamoine and Boothbay Harbor. Mr. Chamberlain seeks help from the Board to encourage the Department of Marine Resources to reconsider the shellfish testing method it adopted this past year that he asserts is significantly increasing the failure rate of shellfish in wet storage facilities, creating economic distress for the shellfish companies he serves. I spoke with numerous people from the private and public sector to gain a more informed perspective on these issues, and wish to share with you a summary of these discussions.

Ms. Kohl Kanwit serves the Maine Department of Marine Resources (DMR) as Director of the Public Health Division. According to its website:

The Bureau of Public Health oversees the application of the National Shellfish Sanitation Program (NSSP) within the State of Maine. This program is implemented internationally by the Interstate Shellfish Sanitation Conference (ISSC) in order to keep molluscan shellfish safe for human consumption. This is accomplished by making sure that a common set of standards are used to classify shellfish growing areas and handle shellfish when they go to market.

Ms. Kanwit indicated that in 2011, DMR submitted a proposal to the Interstate Shellfish Sanitation Conference (ISSC) to change shellfish wet storage testing methods from "multi-tube" to "membrane filtration", stating that the new method increases accuracy and is less time-consuming and labor-intensive. The proposal was approved and the new testing method implemented. She said the older method required a certain degree of guesswork by lab technicians, requiring a five day process that can prevent timely intervention when food safety problems may be evident. As part of its proposal, DMR completed a detailed validation process that indicated that the new test method is not more sensitive than the old method (please see attached). The report's key assertion is as follows:

This (membrane filtration) method produces results in 24 hours and is a less labor intensive method for laboratories. This more rapid test method would allow operators of facilities who provide disinfected process water for shellfish in wet storage and depuration operations the ability to know they have a problem and take the required remediation action on a timelier basis. It would reduce the workload for the laboratory performing the testing. This alternative test should be less costly to the laboratories.

Ms. Kanwit said that ISSC reviews food safety ordinances every two years, and that a shellfish dealer cannot export shellfish unless ISSC testing standards are met. The only means by which Maine could adjust the one coliform to 100 mls seawater metric would be to go through a lengthy ISSC proposal process. As this is the national standard, the likelihood that ISSC would approve such a change is extremely small. Ms. Kanwit said the U.S. Food and Drug Administration views Maine as “the king of shellfish wet storage” because the state far exceeds any other in this food storage process.

She said that when DMR finds a positive test for fecal coliform, it can decide to shut down the plant. Should tests indicate non-fecal coliform, DMR simply makes recommendations. She said that closed wet storage systems sometimes need time for water to clear. Other times, test failures may be due to inadequate equipment cleaning, or dead shellfish contaminating the tanks. Ms. Kanwit could not say whether DMR is seeing a greater degree of positive tests, because wet storage systems tend to be active only in warmer months, and this is the first season the new testing method is being applied. She said that no pattern is yet apparent. She said that one of Mr. Chamberlain's clients has difficulty cleaning one particular pipe which may be the source of his contamination, though there have been no prior problems with his system. She said his storage tank system is simply getting older.

Ms. Linda Chandler of the U.S. Food and Drug Administration is in charge of inspecting all state food safety laboratories. She explained that shellfish wet storage systems pick up proteins as water circulates, precipitating surfactants that interfere with the old multi-tube testing method, but which the new membrane filtration testing method avoids. She explained that the new method is easier, less expensive, and much timelier, with results in 24 hours rather than five days. She disputed that the new test is more sensitive than the old method, saying instead that it is more accurate. She said that Massachusetts adopted this testing method nearly three years ago and seems very satisfied with it, and that Rhode Island is considering adopting it.

She confirmed that the one total coliform per 100 mls seawater is a national standard. She sees no concern that the new testing method may lead to more plant shut-downs. Regarding lab privatization, she said that state labs tend to be more thorough and respond more quickly than private labs.

Mr. Tom Shields is a Senior Biologist with the Massachusetts Shellfish Sanitation and Management Program. He said that his department began using the membrane filtration testing method two and a half years ago and is very pleased with it. His department has seen no measurable upswing in the number of positive tests. He considers this method more accurate, not necessarily more sensitive.

Mr. Ken Moore is the Executive Director of the Interstate Shellfish Sanitation Conference (ISSC). According to its website:

The Interstate Shellfish Sanitation Conference (ISSC) was formed in 1982 to foster and promote shellfish sanitation through the cooperation of state and federal control agencies, the shellfish industry, and the academic community. To achieve this purpose the ISSC:

- Adopts uniform procedures, incorporated into an Interstate Shellfish Sanitation Program, and implemented by all shellfish control agencies;*

- Gives state shellfish programs current and comprehensive sanitation guidelines to regulate the harvesting, processing, and shipping of shellfish;*

- Provides a forum for shellfish control agencies, the shellfish industry, and academic community to resolve major issues concerning shellfish sanitation;
- Informs all interested parties of recent developments in shellfish sanitation and other major issues of concern through the use of news media, publications, regional and national meetings, internet, and by working closely with academic institutions and trade associations.

The ISSC promotes cooperation and trust among shellfish control agencies, the shellfish industry, and consumers of shellfish; and insures the safety of shellfish products consumed in the United States.

Mr. Moore said that ISSC approved the membrane filtration test method, but believes either testing method is acceptable. Test results can be from a wide variety of causes. Should Maine allow both tests, it would be just as compliant. He said that wet storage is used in only a few states, so there is little interest in changing the regulations. He confirmed that direct (non-wet storage) sales must meet a lower standard of 14 coliform per 100 mls, and agreed with Mr. Chamberlain that this seems illogical. He said that any interested party can submit a proposal for regulatory changes; once guidelines are adopted, states are expected to meet minimum standards, and extend these standards to industry with some flexibility. ISSC has helped establish reciprocity agreements whereby should a product from one state meet program standards, the product will be accepted for sale in the reciprocating state. Mr. Moore believes a great deal of money could be saved by moving certain state lab functions to private labs.

According to the ISSC website, such regulation is the responsibility of the National Shellfish Sanitation Program (NSSP):

The classification of shellfish-growing waters is based on the National Shellfish Sanitation Program (NSSP), a cooperative effort involving states, the shellfish industry, and the FDA. Since 1983, it has been administered through the Interstate Shellfish Sanitation Conference (ISSC). The ISSC was formed to promote shellfish sanitation, adopt uniform procedures and develop comprehensive guidelines (NSSP Manual of Operations Parts 1 & 2) to regulate the harvesting, processing, and shipment of shellfish. The NSSP guidelines require each state to classify shellfish growing waters by conducting sanitary surveys that: (1) identify actual and potential pollution sources; (2) evaluate hydrology and meteorology affecting pollutant transport; and (3) assess the results of water samples taken for bacteriological and other contaminants. The sanitary survey is the administrative document upon which growing-water classifications are based... "Approved Waters" (are considered those) "growing waters from which shellfish may be harvested for direct marketing. Fecal coliform median or geometric mean most probable number (MPN) does not exceed 14 per 100 ml, and not more than 10 percent of the samples exceed an MPN of 43 per 100 ml."

Mr. Bob Rheault is the Executive Director of the East Coast Shellfish Growers Association. According to its website:

The ECSGA represents over 1,000 shellfish farmers from Maine to Florida. These proud stewards of the marine environment produce sustainable farmed shellfish while providing thousands of jobs in rural coastal towns. The ECSGA informs policy makers and regulators to protect a way of life.

Mr. Rheault said that he has not received complaints about membrane filtration testing nor has he seen any upswing in test failures. He offered no opinion regarding the privatization of shellfish labs.

Mr. Sebastian Belle is the Executive Director of the Maine Aquaculture Association. According to its website:

It is the policy of the MAA and its members to act as responsible stewards of the environment. As aquatic farmers, we have a strong vested interest in healthy aquatic ecosystems, high water quality and a clean environment. While recognizing that all human activities have environmental impacts, association members are committed to minimizing possible adverse impacts from their activities. We seek to promote responsible development and management of the Maine Aquaculture sector in order to assure the production of high quality food while respecting environmental considerations and consumer demands. It is the policy of MAA and its members to continually seek to achieve long-term economic viability and competitiveness while maintaining our commitment to environmental sustainability and stewardship.

Mr. Belle believes that membrane filtration is an effective testing method. He offered his view that DMR's public health division was not being run well prior to the LePage Administration. He said that Commissioner Patrick Kelleher instituted changes in personnel that he believes are improving the division. He understands that there are currently three lab position vacancies at three state agencies: DMR, the Department of Inland Fisheries and Wildlife, and the Department of Agriculture. He said that Maine Aquaculture has testified to the Legislature in support of moving some testing to private labs. He believes the state should consider consolidating all the labs under the Department of Agriculture and subcontract the testing to private labs, with the single state lab conducting test analysis. He suggested that this arrangement would appropriately separate the testing done by the agency that runs the state fish hatcheries to avoid conflicts of interest. It is the view of Maine Aquaculture Association --that DMR lacks the internal capacity to adequately test and monitor all the waters of Maine and that, as a result, some waters remain closed simply because they have not yet been tested. He said that private labs could help meet this need if allowed by the state.

Ms. Carlisle McLean serves Governor LePage as his administration's Natural Resources Advisor. She expressed a degree of surprise at certain assertions made by Mr. Chamberlain and Ms. Couture. She said the Governor's Office has not received any complaints from constituents regarding the membrane filtration testing method, and said that if the problem was significant, their office would have likely heard about it. She said she would have expected that Mr. Chamberlain would be in favor of such a streamlined test. She indicated that Governor LePage strongly supports the privatization of certain lab functions providing that public safety remains paramount, and that, contrary to Ms. Couture's testimony, she understands that DMR has in fact contracted with her for lab work.

Mr. Gary Edwards is the Executive Director of the Maine Seafood Alliance. According to its website:

Maine Seafood Alliance (MSA) was formed to represent and advocate for all aspects of the seafood industry in Maine. By partnering with state and local governments, MSA's

goals include establishing Maine as a leader in the seafood industry, with the highest standards of quality and consumer safety.

He said that members are concerned that in order to conduct business, protocols and rules by ISSC enforced by the FDA and state must work effectively to keep shellfish industry viable. Alliance members are very supportive of ISSC, he said. Their biggest concern is the state's ability to provide the support of the industry it needs. He said that the USFDA's "Model Ordinance" outlines all its regulations for shellfish across a thousand pages. Regarding private vs. public labs, he said that membership would say there is a place for both. The Alliance generally supports DMR and advocates that it be provided the resources necessary. He said there are some deficiencies but did not offer any specifics.

I would be happy to follow up with these people and/or others who may be able to shed further light on these issues, so please feel free contact me with any such inquiries.

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TO: Secretary of State Charles E. Summers, Jr., Mark Tyler, Patricia Kuhl, Doug Smith,
Mike Cote
FROM: Jay Martin, Small Business Advocate
CC: Deputy Secretary Barbara Redmond, Deputy Secretary Lynn Harvey
RE: Regulatory Fairness Board Public Testimony Follow-Up
DATE: Thursday, September 20, 2012

At the Regulatory Fairness Board public hearing on June 29, the Board heard and received written testimony from Mr. Bruce Chamberlain regarding shellfish food safety testing issues. As you will recall, he seeks help from the Board to encourage the Department of Marine Resources (DMR) to reconsider the shellfish testing method it adopted this past year that he asserts is significantly increasing the failure rate of shellfish in wet storage facilities, creating economic distress for the shellfish companies he serves. Since circulating a previous memo with the Board, I have spoken with the three of the four shellfish dealers Mr. Chamberlain represents, and wish to share with you a summary of these discussions.

Ron Doane is the owner of RDR, LLC in Trenton. He said the state labs are not the problem as he believes they are doing their job. He has experienced non-fecal coliform test failures this year, and said the state did not shut down his operations. He said that DMR has guaranteed him that they will not shut him down, and they will not let him ship bad clams. His clams remain in wet storage until he has two consecutive clean tests. He said that bacteria can be very hard to locate, and that problems often are within the pump piping system. He does not know if there is any connection, but he and others have experienced no problems with DMR since the Regulatory Fairness Board hearing in June. He said the shellfish tagging system is "a shambles" as it is not consistently enforced. As required, he records information on each tag including: digger, date, time, and location. He said that south of Stonington, and especially Cushing, shellfish cannot be properly identified by reading the tags. He said the problems involve smaller operations who come and go seasonally, that sometimes store lobsters in the same tank with clams, when they must be isolated.

Terry Watson is the owner of Clam Hunter Seafood in Phippsburg, and is a former member of the Maine Shellfish Advisory Council. He has been in the shellfish industry since he was 18 years old, and is now 54 years old. He said that he provides water samples to the state laboratory every week. Prior to DMR implementing the membrane filtration testing method exclusively, he said it used both testing methods for a year, and he experienced no test failures. He had his first test failures this year, at a time when two fellow shellfish dealers also experienced test failures. He attributes his test failure to bacteria in an area of his tank that has since been cleaned. He believes that the new testing method is beneficial, as he receives results more quickly.

Mr. Watson raised another issue. He said that some years ago, DMR has installed a flow gauge on Kennebec River to indicate when clam flats down river should be closed, and he said this approach has greatly diminished his business due to extended shutdown periods. At one time, he had 40 clam diggers working for him; he is now down to five. He said that following a closure, DMR requires two good water samples and a good shellfish meat sample before flats can be re-opened, asserting that this is a higher standard than other areas that do not rely on a flow gauge to indicate possible contamination levels. He expects the recent rain to close his flats for weeks. He said he is required to have a clean meat sample where others do not. He has been compelled to buy from other dealers to satisfy his markets, at no profit gain. At one time, he was buying 80% of clams in his area, but now he cannot effectively compete as he cannot draw clam diggers to sell to him. He said he nearly lost his house last year. His region's flats were open five days in June, he said, and he has only five weeks to make his money for year. He expects that he will be closed for weeks as a result of the recent rain. He is concerned that if the flow gauge issue is not addressed, he will likely lose his business.

I spoke with **Stephanie** (last name not given), owner of S & M Shellfish/Lobsters in Kennebunk. She said she has not experienced test failures. She said that DMR is reporting that there are particulates (dirt specks) in every one of her samples, but not coliform. She explained that such particulates can be expected whenever the racks of clams are disturbed, as mud on the clamshells often washes free when they are moved. She does not know what DMR wants them to do about it, other than simply hold the clams until the samples are clear of particulates. They were never quarantined. She believes she had no other choice but to shut down, so since July 4th they have stopped their shellfish business, concentrating instead on lobsters.

She stated strong complaints about the flow gage on the Kennebec River, saying it often provokes the shutdown of clam flats. She said the rules state that DMR must test the flats and not rely upon the flow gauge to indicate contamination levels. She said that DMR expected a loss of 15% of digging days, but they actually lost 85% of days, nearly bankrupting their company.

I have left several messages for **Albert Carver**, owner of Carvers Shellfish in Beals. Should he return my call, I will report to you what I learn from him.

I spoke again with **Kohl Kanwit**, who serves the Maine Department of Marine Resources (DMR) as Director of the Public Health Division. She indicated that the Kennebec River flow gauge is not the sole method DMR uses to determine when and how long clam-flats along the Kennebec estuary are closed, as the department also relies upon the same water quality and shellfish meat testing methods used elsewhere in the state.

I would be happy to follow up with these people and/or others who may be able to shed further light on these issues, so please feel free contact me with any such inquiries.

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TO: Secretary of State Charles E. Summers, Jr., Mark Tyler, Patricia Kuhl, Doug Smith,
Mike Cote
FROM: Jay Martin, Small Business Advocate
CC: Deputy Secretary Barbara Redmond, Deputy Secretary Lynn Harvey
RE: Regulatory Fairness Board Written Testimony Regarding Cosmetology Booth Licensing
DATE: Wednesday, November 14, 2012

Below, please find written testimony regarding the time taken by the Department of Professional and Financial Regulation to issue cosmetology booth licenses. This includes written testimony offered to the Board in June by Julie O'Brien regarding this issue with two associated emails, and testimony since received from eight other salon owners. For your information, when I spoke about this matter with Anne Head, Commissioner of Professional and Financial Regulation, she explained that the time needed to process license applications is due to her department's limited staff resources. I have since met with Ms. O'Brien at her place of business.

TO: Maine Regulatory Fairness Board
FROM: Julie G. O'Brien, owner, Making Waves Salon, 213 Rte 1, Scarborough, Maine
DATE: June 28, 2012
SUBJECT: Public Hearing, June 29, 2012

Dear Board Members,

I regret that I am unable to attend your public hearing, but I have been very frustrated with the Office of Professional and Occupational Regulation for many years. I am attaching my letters to them from 2005. Since then, the situation has gotten progressively worse with no help in sight.

Twenty-two years ago (1990), when I first opened my hair salon, it would only take 24 hours to get verbal approval from the Professional Licensing Department for a new booth renter to start work. Seven years ago (2005), the applicants were told it could take up to 2 weeks to get approval to start work. Today's applicants are told it could take up to 3 weeks to get approval to start work. As a struggling business owner, I need workers TODAY! The unemployed applicants need work TODAY!

Meanwhile, the Governor and all the politicians are on the "create jobs" bandwagon. I've been angry for many years that this Department turns its back on the working-class people and businesses that need their services in order to earn a living and support themselves. To me, this ever-worsening behavior feels like all they want is our money; we don't matter and neither does protecting the public safety. To me, we're just a "money-making machine," and they're just a barrier to business and employment.

Why does it take so long to get approval? In today's world of lightening-speed, "at your fingertips" technology, this Department provides only 2 employees to handle all the licenses for 9 boards. The Barbering & Cosmetology Board itself generates over \$650,000 in license fees every year. Just imagine how much money in total is generated by those nine boards combined--for which there are only two staff. I've even heard that they eliminated one of the salon inspectors. With this kind of money being generated by our licensees, why don't they hire adequate help?

These booth rental applicants already have valid professional licenses which are listed on the State's website, for everyone to see. They can work as employees in other shops and "house-to-house." They aren't a threat to public safety, but this Department is a threat to businesses and employment opportunities. As far as I am concerned, let the applicant pay the fee online, print out a receipt, and start work immediately. Please, get the Office of Professional and Occupational Regulation to change the regulations so we don't need their individual approval before booth renters can start work.

Thank you for your consideration.

Sincerely,

Julie G. O'Brien, owner, Making Waves Salon, 213 Rte 1, Scarborough, Maine

TO: Gerry Betts
FROM: Julie O'Brien, Making Waves Salon, Scarborough
DATE: March 2, 2005
SUBJECT: Booth Rental License

This morning I spoke with Mary Ackerson, my inspector, about wanting to let someone start booth renting at my salon before she has received her actual booth license from the State. Since 1990, when I first opened a salon, the policy was, as long as the Department had received the renter's application and money, then he/she would be allowed to start working as a booth renter under the salon's "umbrella" of inspection. Over the years, I would speak with either you or Marjorie Crandlemire on the phone and get verbal permission. Mary is either unfamiliar with this procedure or the policy has changed. According to her, it would take at least a week for the actual license to be sent out.

In this case, the applicant is desperate to earn money. One of my renters just finished up on Saturday. The timing is right for both of us. Furthermore, for myself, it sometimes takes over a year to find a replacement renter. If I lose this opportunity, a year's rent loss is over \$7,000. To me, the old policy protected both the worker and the business owner from being hurt by the laws set up to protect the public as well as by the lack of adequate staffing within the departments. Please let me know as soon as possible because there is a very small window of opportunity for this to be successful. Thanks for your consideration.

Julie O'Brien

TO: Gerry Betts
FROM: Julie O'Brien, Making Waves Salon, Scarborough
DATE: March 7, 2005
SUBJECT: Booth Rental License

I received your March 4 letter via fax today. Thank you for your prompt reply. This morning, however, I further spoke with Mary Ackerson, trying to come up with an option which would enable someone to start their booth rental without delay. This idea concerned whether an applicant who was willing to drive directly to the Licensing Office in Gardiner would be able to receive his/her license in person. To me, this would solve the problem for me and any future applicant, since last week's applicant has already "moved on" to other opportunities. Mary thought "no." To me, if the State allows people to get motor vehicle licenses and registrations at our local town halls, then what is standing in the way of someone who already has their cosmetology license and is willing to drive to the Gardiner Office in person, from acquiring the necessary booth rental license to start making a living. I find it hard to believe that the State of Maine wants to make it impossible for needy, hardworking, motivated people to go to work. I'd like to get your position on this scenario, please. Thank you for your consideration.

Julie O'Brien

Dear Board Members,

Please consider changing the amount of time it takes for a booth renter to start contributing to the tax base in the State of Maine. A Non-Working Booth Renter potentially can put a burden on our State Systems and contribute to our deficits. Let's start making it easier on folks that are trying to contribute to the System not take from it.

Elizabeth Hall, 32 year Cosmetology Veteran and still working

Dear Board Members,

I am a salon owner in Falmouth, Maine. Four of the stylists renewed their cosmetologist and booth licenses online. The booth licenses have taken longer to receive. My cosmetologist and Establishment licenses came back on the same day. I do not understand the delay.

Angelica Barrett, owner, Trend Setters Salon, Falmouth

Dear Board Members,

I am writing to express my concerns about the amount of time it takes a Cosmetologist to receive a booth license. When a Cosmetologist changes places of employment it is crucial that they get to work as soon as possible to retain their clientele. A three week wait is unacceptable. Julie O'Brien has suggested that a booth renter could apply online and use her receipt of payment as a temporary license until a license can be processed.

I appreciate the efforts that have been made to help in our profession, such as lowering our license fees and going to an online system. I think it is a smart step to downsize staff in order to downsize state government, and I am sure a system can be set up to expedite licensing.

Holly Whitmore, owner, Hair & Company, Brewer

Dear Board Members,

These people need to work!! The wait time after applying for an establishment booth license & receiving it to start working is ridiculous. Clients are lost, income is lost & that income can never be made up. Cosmetologists should be able to apply, pay, print, work & then the board of B&C can deal with the red tape but at least our families are fed, mortgages paid & clients are retained. In a way, you are enabling and to an extent pushing some of these people to work illegally, i.e. under the table from home. Tax \$\$ Maine should be realizing, lost, due to red tape... Come on salaried, desk, State workers with benefits & retirement plans...we have nothing unless we are physically WORKING!!! Time IS money in our profession!! Thank you for your attention.

Lynne Cox, cosmetologist, former establishment owner, former booth renter, currently retired

Dear Board Members,

I am a salon owner for many years who rents space to 6 others. Although I appreciate the need to cut costs I see a real need for those willing to obey licensing laws to be able to relocate quickly when necessity dictates. I think Julie's idea is very good & believe it to be a great solution for us as well as the state.

Several weeks or more without licensure can be very devastating for new applicants. Many times I have experienced that booth renters have been wrongfully and untimely cut off from their places of work by

owners who abuse or mishandle their authority. Some of these owners don't even allow renters back in to retrieve their business and personal belongings.

I know of two excellent ladies who had always paid rent on time, that didn't like the cleanliness and unprofessionalism displayed by the owner of the business, did the right thing to go directly to the owner and mentioned they were "considering" looking elsewhere. The owner's reaction was unconscionable. They were forced to leave immediately, there was no negotiation. When the two came to me, I encouraged them to call the Board of Cosmetology and ask to drive up to Augusta to speed the applications. They did that and were told "We don't do it that way anymore". To one of the ladies it was especially difficult because she was the main support of the family, who thought it was very important to observe the legalities. Another lady who rents space was told just a couple days before that her business would be closing their doors and she would have to vacate. No other notice was given.

As you can see, these situations call for immediate action. If the timing for acquiring new establishment licensing could be speeded up without costing the state more it would be a very good thing.

I've been a stylist for 41 years and seen many changes. Thank you for your time.

Janet T.Thiboutot, owner, As You Wish, Portland

Dear Board Members,

I have been a barber for 52 years. I received an e-mail from Julie O'Brien concerning a three week time frame to receive a booth license. She claims that it could be processed online in one day and I agree with her 100 percent. If we can register our cars and many other licenses that quickly, why not a booth license? This state has to make every effort to help people go to work if they apply for it. Thank you.

Maurice Landry, owner, Moe's Styling, Lewiston

Dear Board Members,

I read the email from Julie O'Brien about the length of time it takes to get a booth renter up and working. In these tough economic times for everyone, the state included, the idea of online registration just makes sense. The booth renter gets right to work, the State can be there within 30 days to inspect. A lot of times in our industry one booth renter is the difference between making your bills and not. I owned Mikayla J's in Portsmouth, NH for eight years. I lived what a struggle it is to get and keep help. Hairdressers these days are like nomads...coming and going and the owner is left high and dry most of the time.

Please give Julie's idea of online registration some careful consideration - everyone wins. Less stress for owners, less stress for the state. Isn't that what we all could use these days?

Patricia King, owner, Mikayla J's Salon, Eliot

Dear Board Members,

It takes up to 3 weeks to get new booth renters their licenses so they can start working as soon as they can. I am a salon owner and I went through this myself this past summer with my booth renter. Something should be done so these people can get to work. My girl is a single mother who is trying to work her way through college for a better paying profession to support her daughter. So if you could help this situation, it would be greatly appreciated. Thank you very much for your consideration in this matter.

Linda Stevens, owner, Natural Look Beauty Salon, Palmyra

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TO: Secretary of State Charles E. Summers, Jr., Mark Tyler, Patricia Kuhl, Doug Smith,
Mike Cote
FROM: Jay Martin, Small Business Advocate
CC: Deputy Secretary Barbara Redmond, Deputy Secretary Lynn Harvey
RE: Regulatory Fairness Board Public Testimony – Cosmetology Booth Licensing
DATE: Wednesday, December 12, 2012

At the Regulatory Fairness Board public hearing on November 16, the Board heard and received written testimony from Ms. Julie O'Brien, who owns and operates a cosmetology establishment in Scarborough. She is advocating for the Department of Professional and Financial Regulation (PFR) to lessen the time between the submission of a booth renter application and the issuance of the license. The Board received written testimony from seven other salon owners and one cosmetologist taking a similar position.

Yesterday, I spoke with PFR Commissioner Anne Head and wish to share with you a summary of this discussion. She reported the following:

Commissioner Head has researched the average number of calendar days from receipt of booth license applications to booth license activation in 2011 and 2012. The average number of days so far in Calendar 2012 is 15 days, a reduction from an average of 35 days in Calendar 2011. There are many examples of such licenses being issued (activated) on the day following receipt of the application. One of the primary reasons for delays involves applications that are incomplete or invalid because of required information being crossed out and/or use of correction fluid. License applications are required to be submitted in a clean and complete state. Applications are returned when found to be inaccurate; for example, when a criminal history background check contradicts what is reported on the application. In these situations, applicants are asked to submit a written explanation of the discrepancies. Any staff request for additional information from an applicant will increase the number of days from receipt of application to issuance of an active status.

The Office of Professional and Occupational Regulation (OPOR) within DPFR is an umbrella state administrative agency responsible for the regulation of 37 professions. As a state agency, OPOR must comply with the Department of Audit's internal controls. These controls ensure that state funds are accounted for and deposited in a timely fashion. The process of receipt, allocation and deposit of all funds may also be a reason that an applicant experiences a longer wait time today for a license as compared to several years ago.

A licensee should know that once the license is issued and made active, the booth renter need not wait to receive a paper license before working in an establishment. Rather, they can begin work right away once they confirm via PFR's website that their booth license is designated as "active." This applies to all licenses issued by the Barbering and Cosmetology Program. It is also important to clarify that a booth renter operates his or her own business separate from the establishment and as such, an establishment owner may enter into an agreement to rent space with a prospective booth renter at any point before a booth renter license is activated. However, before working on clients, the booth renter must have an active booth renter license.

Although the booth license application may seem straightforward, it is not possible for PFR staff to process this one category of license applications separately from the hundreds of other types of license applications that are submitted to OPOR on a daily basis. Wait times can be expected to decrease once the Department implements its online application process. The Department is currently piloting such an application process for electrician licenses and permits, and expects to offer this for all its professions within the next few years.

The Department of Professional and Financial Regulation and agencies within it are dedicated revenue agencies; no general fund money is received to fund the licensing programs established by the Legislature. Because each licensing program must support its own regulatory program, the Department has established sub-accounts for each program. The licensing fees for the barbering and cosmetology program may not be commingled with the fees of any other licensing program.

I would be happy to conduct any other research you would like to request, so please feel free contact me with any such inquiries.

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Appendix D: Letters from the Board Chairman

January 10, 2012

Honorable Christopher W. Rector
Chair, Committee on Labor, Commerce, Research and Economic Development
c/o Legislative Information
100 State House Station
Augusta, ME 04333

Honorable Kerri L. Prescott
Chair, Committee on Labor, Commerce, Research and Economic Development
c/o Legislative Information
100 State House Station
Augusta, ME 04333

Dear Senator Rector, Representative Prescott and Members of the Committee:

The passage of PL Ch. 304 in June 2011 ushered numerous changes in our regulatory systems to improve fairness and activate effective reform. One change this statute put into action is to shift the responsibilities of chairing and staffing the Regulatory Fairness Board from the State Planning Office to the Office of the Secretary of State.

I am pleased to inform you that all four appointments are now filled and that I convened an organizational meeting of the Board on Friday, January 6, 2012. Please see the enclosed Board contact list.

As you may be aware, I appointed Jay Martin as Maine's first Small Business Advocate in October 2011, who staffs the Board. You may contact Jay at any time with questions and comments at 626-8410.

Sincerely,

Charles E. Summers, Jr.
Secretary of State

May 16, 2012

Sen. Christopher W. Rector

Senate Republican Office
3 State House Station
Augusta, Maine 04333

Dear Senator Rector:

The Maine Regulatory Fairness Board (RFB) invites public testimony on regulatory and statutory issues that affect Maine businesses. The Board elicits public comment from Maine business owners/managers and the public concerning specific state rules and regulations that may unreasonably impede business sustainability and growth; and subsequently makes recommendations to the Legislature and the Governor for regulatory and statutory changes that may enhance Maine's business climate.

On Friday, February 24, 2012, the Maine Regulatory Fairness Board held a meeting and heard public testimony from 14 of the 25 people in attendance. As you Chair the Joint Standing Committee on Labor, Commerce, Research and Economic Development (LCRED), I want to bring to your attention testimony by those in the water treatment business and representatives of the Water Quality Association based in Illinois, which may be of interest to you.

Dan Cote of Aquamax in Lewiston, Kevin Kaserman of Dunbar Pumps in York and Eric Wilson of The Water Doctor in Bath, stated that while Maine law currently requires all water treatment systems to be installed by licensed plumbers, not all plumbers have an understanding of water treatment technology. They testified that this gap in familiarity with the system often leads to improper installation, with a high cost to the consumer as the fee for employing a licensed plumber is significantly more than what these installations warrant. They further claim that the consumer is then left with a system that may be unsafe, due to improper installation, as well as a lack of follow-up testing and/or servicing.

Tanya Lubner and David Loveday of the Water Quality Association said that they supported the testimony of these business owners by citing technical aspects of the water treatment industry. They stated that water treatment equipment demands proper installation, follow-up hydraulic testing and servicing. They claim that over half of Maine's population relies upon private wells and that this fact prompts their significant concern about the safety of improperly treated well water. The Association representatives cited Texas, Minnesota, and California as states that have implemented tiered certification programs for water treatment specialists. For additional information regarding the Texas water treatment specialist certification program, please go to <http://www.tceq.texas.gov/licensing/licenses/wtslic>.

In a follow-up conversation with Small Business Advocate Jay Martin, who staffs the Regulatory Fairness Board, Mr. Scott Knapp, President of Central Maine Community College, asserted that CMCC and other Maine community colleges would be interested in offering a vocational training program for students interested in becoming certified as Water Treatment Specialists through their non-credit oriented business and industry training units.

I hope you find this testimony helpful as you explore any regulatory and statutory changes. If you have any specific questions on how the meetings and hearings are conducted, please contact Jay Martin as he would be more than happy to speak with you at any time. You may reach him at (207) 626-8410 or jay.martin@maine.gov.

If I may be of further assistance on this or any other matter, please do not hesitate to call on me.

Sincerely,

Charles E. Summers, Jr.
Secretary of State
Chair, Regulatory Fairness Board

cc: Rep. Kerri Prescott, LCRED Committee Chair
Members of the LCRED Committee
/jm

May 17, 2012

The Honorable Paul R. LePage
Governor of Maine
1 State House Station
Augusta, Maine 04333

Dear Governor LePage:

The Regulatory Fairness Board (RFB) invites public testimony on regulatory and statutory issues that affect Maine businesses. The Board elicits public comment from Maine business owners/managers and the public concerning specific state rules and regulations that may unreasonably impede business sustainability and growth; and subsequently makes recommendations to the Legislature and the Governor for regulatory and statutory changes that may enhance Maine's business climate.

On Friday, February 24, 2012, the Regulatory Fairness Board held a meeting and heard public testimony from 14 of the 25 people in attendance. I understand that one attendee, Ms. Catherine Weare, owner and operator of the Cliff House Resort in York, has contacted your office regarding a particular matter involving fire safety regulations, so I wish to share with you a summary of Ms. Weare's testimony.

Ms. Weare told the Board that her family has owned the Cliff House for 140 years, making several additions through the years, most recently in 1976, 1981 and 1988. She said that each addition received approval from the State Fire Marshall's office with occupancy permits issued. She testified that there have been no incidences of fires.

Ms. Weare reported that in 2010, one of the two York Beach volunteer fire chiefs insisted that all Cliff House buildings be updated to meet current fire safety regulations, at an estimated cost of over \$150,000. Ms. Weare claims that such modifications are unnecessary and not

mandated by law. She cited the National Fire Protection Association Life Safety Code 101: “approved existing installation(s) shall be permitted to be continued in use”. Ms. Weare also testified that her attorney cites the legal doctrine of “equitable estoppel” to indicate that the current fire chief is prevented from disavowing the decisions of his predecessors.

Ms. Weare claimed that in 2011, when the York fire chief first raised this issue, the Cliff House did not receive renewal of its liquor license until two days before opening for the season. She asserted that her concern over a similar delay or possible rejection of her 2012 business licenses provoked her to reach a settlement agreement on January 24 with the York fire chief. In this agreement, she says the Cliff House and the York fire chief acknowledge that the facility is currently in full compliance with all fire safety codes. Ms. Weare said she agreed to invest \$30,000 over four years to address the fire chief’s concerns about the Cliff House’s fire alert systems. Her business licenses received approval the same week, she reported.

Ms. Weare urged the State of Maine to take action to ensure that approved existing fire alarm systems permitted prior to the latest revision of NPRA 101 be allowed to stand. She said that to do otherwise, would be to force thousands of Maine business owners to spend millions of dollars to achieve compliance when in fact the prevailing fire safety codes explicitly state that such investments are not required.

I hope you find Ms. Weare’s testimony helpful as you explore any regulatory and statutory changes. Jay Martin, Small Business Advocate, staffs the Regulatory Fairness Board, and if you have any specific questions on how the meetings and hearings are conducted, he would be more than happy to speak with you at any time. You may reach him at (207) 626-8410 or jay.martin@maine.gov.

If I may be of further assistance on this or any other matter, please do not hesitate to call on me.

Sincerely,

Charles E. Summers, Jr.
Secretary of State
Chair, Regulatory Fairness Board

May 17, 2012

Ms. Mary Mayhew, Commissioner
Department of Health & Human Services
11 State House Station
Augusta, ME 04333-0011

Dear Commissioner Mayhew:

The Maine Regulatory Fairness Board (RFB) invites public testimony on regulatory and statutory issues that affect Maine businesses. The Board elicits public comment from Maine business owners/managers and the public concerning specific state rules and regulations that may unreasonably impede business sustainability and growth; and subsequently makes recommendations to the Legislature and the Governor for regulatory and statutory changes that may enhance Maine's business climate.

On Friday, February 24, 2012, the Maine Regulatory Fairness Board held a meeting and heard public testimony from 14 of the 25 people in attendance, including several members of the Maine Marijuana Caregivers Association. As the Department of Health & Human Services (DHHS) manages the Maine Medical Use of Marijuana Program, I want to let you know of the testimony that was given to the Regulatory Fairness Board by three medical marijuana caregivers representing this Association.

During testimony, one caregiver suggested that the rulemaking category for this program be changed from "major substantive" to "routine technical" in order to streamline the process. Another caregiver testified that he would like to be allowed to grow plants in secure outdoor environments. Caregivers stated their belief that the \$300 annual fee charged to caregivers for each patient is unreasonable. They suggested that DHHS cap the fee per patient at what they feel is a more equitable rate as the services they receive in return are few. They claimed that DHHS does not currently conduct inspections of their operations and does not offer follow-up regarding patient care. Caregivers asserted that in comparison, a pharmacist's license in Maine is \$250 and allows for an unlimited number of patients each year with a greater degree of oversight from DHHS.

I hope you find this testimony helpful as you explore any regulatory and statutory changes. Jay Martin, Small Business Advocate, staffs the Regulatory Fairness Board, and if you have any specific questions on how the meetings and hearings are conducted, he would be more than happy to speak with you at any time. You may reach him at (207) 626-8410 or jay.martin@maine.gov.

If I may be of further assistance on this or any other matter, please do not hesitate to call on me.

Sincerely,

Charles E. Summers, Jr.
Secretary of State
Chair, Regulatory Fairness Board

Appendix E: Summary of the Work of the Small Business Advocate
October 2011 – October 2012



Department of the Secretary of State

Summary of the work of the
Small Business Advocate
10/6/11 – 10/6/12

The Small Business Advocates Office assisted 19 businesses since October 6, 2011. This summary indicates the businesses that formally requested the assistance of this office, and we played a role in helping them as appropriate. In addition, this office has processed the following:

- 38 Cases Never Opened. This figure indicates those businesses that contacted our office with inquiries but never submitted a formal request for our assistance.
- 15 Cases Outside of Scope. This figure indicates those businesses that sought our help but we were unable to assist them as their request fell outside the scope of this office.
- 45 Cases Referred. This figure indicates cases that we determined were outside the scope of this office, yet we were able to connect them with other agencies and organizations to provide assistance.

Aging Excellence, Sharron Hendry, 185 Port Road, Kennebunk

Ms. Hendry was assessed a \$15,000 penalty by the Workers Compensation Board, which she agreed to pay. She fulfilled payments of \$10,000. She stated that due to recent difficult business circumstances, she requested to delay payments on the final \$5,000 over a number of months, but the Workers Compensation Board denied this request. She requested the assistance of this office to re-negotiate the terms of her payment plan, but then decided to meet the original terms of the plan.

Bangor Wine and Cheese, Eric Mihan, 86/88 Hammond St Bangor

Mr. Mihan sought to repackage in 64 ounce bottles keg beer produced by various breweries for resale at his retail shop where he maintains an off-premise liquor license. The liquor inspector determined that such practices are not allowed under Maine law, and that only those companies licensed to brew beer may package it for retail sale. This office interviewed the owner, reviewed the pertinent statutes and rules, consulted with legislators and others, and determined that the liquor inspector's findings are valid.

Bartley's Dockside Restaurant, Brian Bartley, 4 Western Avenue, Kennebunk

Mr. Bartley was informed by the State Fire Marshal's Office that it would not support the renewal of his liquor license until he replaced the ventilation system in his kitchen. This office interviewed the owner, toured the kitchen, and facilitated discussions between the business owner and state agency. Mr. Bartley submitted replacement estimates and received an extension for the replacement. The liquor license was subsequently renewed, and the ventilation system has since been replaced and has passed inspection.

Bay State Financial Advisors, Alec Stevens, 75 Leighton Road Bldg. C, Falmouth

Mr. Stevens faced a penalty from the Securities Division of the Office of Professional and Financial Regulation due to certain violations found during an audit of the financial services company where he is employed. Mr. Stevens contested these findings. This office interviewed Mr. Stevens, reviewed documentation, spoke with various stakeholders, requested information from the Office of Professional and Financial Regulation, and monitored developments. The initial penalty of a \$2,500 fine and a 30-day license suspension, both of which Mr. Stevens would need to disclose to future clients and employers, was reduced to a \$1,500 fine and no license suspension, with no penalty disclosure requirements.

Cliff House Resort, Kathryn M. Weare, Shore Road, Ogunquit

Ms. Weare's resort was subject to an inspection by the local fire chief prior to renewal of various business licenses. When the fire chief issued a list of required life safety equipment upgrades, Ms. Weare contacted the State Fire Marshal's office and this office to voice her objections to these requirements and seek assistance. This office referred Ms. Weare to the Regulatory Fairness Board, to which she testified. Subsequently, Board Chairman/Secretary of State Charles E. Summers, Jr. sent a letter to Governor LePage summarizing Ms. Weare's testimony. Ms. Weare ultimately achieved a compromise agreement with the fire chief.

The Elms Bed & Breakfast, Scott Balfour

Mr. Balfour expressed concerns about the Department of Transportation's plans to permanently move utility lines from the Sappi paper mill across the street from his historic bed and breakfast to his side of the street where they would obstruct the view of his building. This office interviewed the owner, toured the facility, reviewed regulations and documentation, and spoke with DOT and the Maine Historic Preservation Commission. DOT proposed an alternate plan that Mr. Balfour found satisfactory.

Dr. Emmanuel Amoah, DDS, Glenburn

Dr. Amoah sought a license to practice dentistry in Maine, but was initially advised by the Board of Dental Examiners that because he received his undergraduate degree from a non-accredited institution, he is required to complete an additional two years of training at an accredited institution before qualifying for licensure in Maine. This office interviewed Dr. Amoah, reviewed documentation and regulations, spoke with regulators, legislators, and other stakeholders, and determined that the Board was acting consistent with its protocols regarding foreign-trained dentists. Dr. Amoah subsequently moved to Virginia where is currently practicing dentistry.

Freshwater Stone, Jeff Gammelin, 4 Upper Falls Road, Orland

Mr. Gammelin operates a stonecutting and fabrication business which uses well water to keep equipment cooled during the cutting process. He stores bulk and waste stone on his site. The Department of Environmental Protection issued a Notice of Violation to Mr. Gammelin citing him for inadequate capture and disposal of the suspended solids in his process water and storm water runoff. Mr. Gammelin worked closely to DEP to address the process water issues to DEP's satisfaction; however, he objected to the expense and encumbrance of the storm water buffer zone and detention pond required by DEP. This office met with Mr. Gammelin, his staff, and the state representative at his facility, reviewed documentation and regulations, and spoke with DEP staff. We facilitated discussions between Mr. Gammelin and various storm water experts but ultimately were unable to find a solution acceptable to both Mr. Gammelin and DEP. Mr. Gammelin is currently in the process of building the required detention pond and buffer zone.

Gene Putnam, 22 Rowell Road, Hampden

Mr. Putnam ran a land surveying and forestry consulting business for many years, and sought the assistance of this office to redress his grievances with the appropriate licensing boards due to multiple license sanctions and suspensions. This office interviewed Mr. Putnam, reviewed documentation and regulations, and researched Mr. Putnam's license history. Due to the extent of well-documented violations and length of time that had transpired since the license sanctions and suspensions, this office found it could not provide assistance to Mr. Putnam.

Great Falls Builders, Inc., Jonathan Smith, 20 Mechanic Street, Gorham

The Unemployment Insurance Commission found Mr. Smith in violation of misclassifying certain people on his payroll as independent contractors when the Commission believed they should be classified as employees. The Commission assessed Mr. Smith a fine equivalent to the unemployment insurance he would have paid should they have been classified as employees. Mr. Smith appealed, and requested the assistance of this office. We interviewed Mr. Smith, reviewed documentation and regulations, and sought to participate in the hearing but were denied. The Commission upheld the original penalty and Mr. Smith agreed to pay it.

Jungle Hair Salon, Julian Harwood, 357 Main Avenue

Mr. Harwood requested our assistance stating that his business in Farmingdale was being negatively affected by changes in the curbing along Main Avenue due to a major reconstruction of the road. This office interviewed Mr. Harwood, toured the facility, reviewed documentation and regulations, and spoke with officials from the Maine Department of Transportation. We found that DOT officials had worked diligently to consider and address Mr. Harwood's concerns.

Kerry Ingredients and Flavors, Chris Thiel, 40 Quarry Road, Portland

This industrial coffee producer faced spending \$200,000 to retrofit its roof water drainage and process water drainage systems so the City of Portland could more efficiently monitor its process effluent, (coffee-tinted water). This office interviewed the manager, toured the facility, researched regulations, and met with the company's engineering consultants. We attended a key stakeholders meeting where an equitable resolution was found whereby the Department of Environmental Protection allowed the City to simply monitor the effluent on dry days.

LaVallee Links, Dr. James LaVallee, 86 Barber Road

Dr. LaVallee developed a disk (Frisbee-style) golf course along Togus Stream but failed to first secure the proper permits from the Department of Environmental Protection. During a routine inspection, DEP cited the business for numerous shoreland zoning violations. The owners contended that because streamside activities account for 70% of their business, to move the facility 75 back from the streamside would shut them down. This office interviewed the owner, toured the facility, researched regulations, reviewed documentation, and met with the owner and engineering consultant to review its permit application. Together with the owner and engineer, we met with DEP to submit the permit application. This office facilitated discussions whereby the owner conceded to make all streamside structures temporary and DEP found that other issues are subject to town's shoreland zoning.

The Meadows, Laurie Miller, Director, 358 Main Street, Old Town

This assisted living private non-medical institution (PNMI) facility was found to be in violation by the Department of Health and Human Services, primarily due lack of adequate space for its 16 residents. Ms. Miller proceeded to spend \$47,000 in pre-development costs approved by DHHS only to have the project stopped due to the state's conflicts with improperly using federal funds to reimburse PNMI facilities. When Ms. Miller sought to have the pre-development costs reimbursed, DHHS cited a regulation stipulating that such costs are reimbursed only when the capital project is completed. This office interviewed the director, toured the site, reviewed regulations and documentation, spoke with legislators, emailed DHHS officials, and monitored developments. The Meadows was reimbursed approximately \$35,000 of the \$47,000 owed, and they continue to seek full reimbursement.

Maine Public Car Auction, Maxx Coombs, 5 Laurel Point Circle, Harpswell

Mr. Coombs was nearing the opening of his new public car auction business when his business received a routine pre-licensure inspection by the Bureau of Motor Vehicles. When the investigators found and related to Mr. Coombs certain problems that would prevent them from recommending licensure, Mr. Coombs suspended the inspection and postponed his grand opening promotional event. He sought assistance from this office in addressing his grievance regarding the costs he incurred due to the delay in opening his business. This office interviewed Mr. Coombs and BMV staff, researched documentation and pertinent regulations, and found that Mr. Coombs had no recourse but to work with the Bureau to ensure adherence to all relevant regulations.

Maple Hill Farm Bed and Breakfast and Conference Center, Inc., Scott Cowger

Mr. Cowger's spa (hot tub) failed to pass inspection by the Department of Health and Human Services inspector for numerous reasons. Mr. Cowger addressed all the issues highlighted on the inspection report, but contended that the installation of a required flow meter filtering device was too expensive to implement. This office interviewed the owner, reviewed regulations and documentation, spoke with the Maine Innkeepers Association, and contacted DHHS. The department ultimately issued updated guidelines that grandfathered all existing public hot tubs from the flow meter requirement.

MidMaine Storage Solutions, LLC, Neil Strong, 60 Mill St. Corinna,

Mr. Strong maintained a storage truck on private property he leased along a state road near his business. The truck prominently displayed signage promoting his business, but the Department

of Transportation found this signage to be in violation of the law that prohibits billboards. This office interviewed the owner, toured the site, reviewed regulations and documentation, and spoke with DOT officials. We found that the truck was indeed in violation. The business owner planned to seek alternate roadside promotional methods.

Weskeag Farms, Larry Arbour, 33 Thomaston Street, Thomaston,
Mr. Arbour sought our assistance to clarify his understanding with the Department of Inland Fisheries and Wildlife regarding his rights to farm land he sold to the department in 1996. I. F. & W. recently sought to curtail his farming activities, and sought rent for any farming usage. This office interviewed the owner, discussed the case with I. F. & W. and U.S. Fish and Wildlife officials, and reviewed documents and regulations. As the purchase and sale agreement did not include any clause providing for Mr. Arbour's indefinite use of the farmland, we determined that Mr. Arbour has no legal standing to press for usage of the land he sold to the department. Mr. Arbour decided he would work with IF&W to see if an arrangement could be made to allow him to farm other land it owns nearby.

Wilson's Drug Store, Jonathan Desjardins,
Mr. Desjardins faced a repayment to MaineCare of \$473,000 due to DHHS finding that one of his pharmacists had failed to renew his professional license for three years. This office interviewed Mr. Desjardins, reviewed documentation and regulations, spoke with regulators, legislators, and other stakeholders, and found that the pharmacy was inspected five months after the license first expired. This office invited a memo from Dept. of Professional and Financial Regulation that acknowledged its failure to properly inspect all pharmacist licenses at the drug store, and we facilitated a letter from a former state senator testifying to the drug store's importance to the community. We determined that the penalty was excessive, and provided a letter urging reasonable repayment amount approximate to the profit margin earned by the pharmacy for the prescriptions filled by the unlicensed pharmacist for the five months in question. At the settlement meeting, MaineCare reduced the repayment to \$25,000. The owner is currently making scheduled payments to DHHS.

Appendix F: 2012 Regulatory Fairness Board Members

Secretary of State Charles E. Summers, Jr. – Chairman

Nash School Building, 103 Sewall St.
148 State House Station
Augusta, Maine 04333-0148
Office: (207) 626-8400
Email: charles.summers@maine.gov

Appointed by Governor Paul R. LePage on December 2, 2011:

Ms. Patricia Kuhl

Owner, PK Associates
22 Tarratine Drive
Brunswick, Maine 04011
Office: (207) 729-2260 Home: (207) 729-5229
E-mail: patk@pkmaine.com

Information about the Board, including
biographies, may be found at:
www.maine.gov/sos/sba/rfb.html

Hon. Douglas Smith (Retired)

P. O. Box 460
Dover-Foxcroft, Maine 04426
Office: (207) 717-3360 Home: (207) 564-8819
E-mail: sendougsmith@gmail.com

Appointed by Senate President Kevin L. Raye on October 19, 2011:

Michael R. Cote

Owner, Looks Gourmet Food Company
1112 Cutler Road
Whiting, Maine 04691
Office: (207) 259-3341
Cell: (207) 263-5360
E-mail: mcote@barharborfoods.com

Appointed by House Speaker Robert W. Nutting on October 26, 2011

Mark A. Tyler - Vice Chairman

Owner, Riverside Farm Market and Cafe
291 Fairfield Street
Oakland, Maine 04963
Work: (207) 465-4439 Home: (207) 465-3130
Cell: (207) 465-5789
E-mail: rfm@gwi.net

2012 Staff:

Jay Martin, Small Business Advocate

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148 State House Station
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Information about the Small Business
Advocate may be found at:
www.maine.gov/sos/sba