

# MAINE STATE LEGISLATURE

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## **2014 Report of the 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*

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## **Executive Summary**

The Regulatory Fairness Board (RFB) was first established in 2001 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. The Board received technical assistance from the State Planning Office. In 2011, under the regulatory reform act, known as LD 1 (PL 2011 Chapter 304), the Regulatory Fairness Board was transferred to the Secretary of State's office and the office of the Special Advocate was created to, in part, staff the board (Appendix A.)

The Regulatory Fairness Board, comprised of five members who are or have been owners, operators, or officers of businesses operating throughout the State, hears public comment from Maine businesses concerning interactions between businesses and government agencies, specifically state regulations which seriously impact business. The Board also reviews complaints filed with the Special Advocate's Office and any regulatory impact notices filed by the Secretary of State on behalf of those businesses.

The RFB meets in different regions of the state to hear testimony from business community representatives and holds public meetings in Augusta for administrative and operational purposes and discuss public comments received in writing in between public hearings.

This report summarizes the Board's activities during the year 2014 including information presented to the Board, and its resulting recommendations.

During 2014 the Regulatory Fairness Board held three public meetings in Augusta, Lewiston and Brunswick. The board heard concerns over professional licensure, insurance licensing, repeal of the Maine Uniform Building and Energy Code, site review for redevelopment sites through DEP, sales tax collection, and uneven and inadequate expansion of broadband, especially in rural Maine. The board also discussed the problem of access to capital for small business, and the January 2014 meeting included a discussion with the Finance Authority of Maine and the United State's Small Business Administration on the availability and issues around access to capital for small businesses.

The Small Business Advocate worked with over 25 businesses to answer questions, provide information and to intercede with regulatory agencies on their behalf. The work encompasses a wide range of issues and interactions with just about every agency in State government. This report includes a brief sampling of the work of the office and the Regulatory Fairness Board.

The work of the advocate identified the following areas of opportunity for regulatory reform.

**Professional licensure:** One specific example is hair braiding. This is a common business practice in Maine's immigrant community and requires being licensed by the board of Cosmetology even though the Department of Professional and Financial Regulation has no interest in regulating this type of business, Current statutes make practicing hair braiding without a license a Class D crime. Deregulation of hair braiding would require a statutory change. Senator Ann Haskell has submitted legislation to make this change. **The Regulatory Fairness Board endorses this legislation.**

**Liquor Licensing:** Current liquor laws do not recognize new business models, and as a result businesses have been seeking statutory changes that allow them to operate. These are done one at a time, and the current regulatory system is a patchwork of exemptions created over time. Each business that has a slightly different business model must come before the legislature to request a statutory change. This process makes little sense to the business or to Liquor Enforcement and it makes the liquor laws difficult to navigate and implement. A complete re-codification of the statute is long overdue and would make the current exemptions more consistent and easier to navigate by businesses.

**Gathering greater feedback from the public.** The Small Business Advocate's webpage is being up dated to include a simple web-based feedback form. The intent is to make it easier to gather information from businesses that are having regulatory difficulty. The form will also allow small businesses to identify regulations, rules and statutes that potential create an undo regulatory burden. This form will go live in February of 2015.

**Broadband expansion.** Three reports in the past year have identified the need to expand broadband to meet the needs of businesses in rural Maine. The Governor's Broadband Capacity Task Force's report "Broadband: The Road to Maine's Future" (2013) recommends a demand side solution. This report identifies a perceived lack of value for businesses and individuals in computer use, with 59% of Maine's 141,000 small businesses indicating they do not have a website, and 55% see no use in the internet. When asked why 55% said there is not much value, and 18% of households and 18% of businesses said that the costs for adequate levels of service were too high. The Governor's task force recommends expanded education so that businesses and individuals can make better use of computers. The report believes this increased demand will drive expansion of broadband statewide.

While there is clearly a need to increase computer use, especially among rural businesses, the cost of pushing out true broadband to rural areas cannot be met by demand alone. ConnectMe Authority's "Developing Broadband in Maine, A Strategic Plan" (2014) and "Moving Maine Up the Broadband Ladder" (2014) from Fletcher Kittredge of GWI also contained the recommendation that the Universal Service fee (USF), currently used to provide telephone service via copper lines be expanded to include access to broadband and building out of high speed fiber. These reports argue that copper and landline phones are old technology and the USF could be used to implement new technology, similar to what has been done with cellular service in rural areas where the USF was used to build new towers serving more of rural Maine.

The 127<sup>th</sup> legislature has approximately 35 bills relating to expansion of broadband in Maine. The Board recommends the legislature take this opportunity to take real action to expand high speed broadband to rural Maine. This would allow those small businesses access to a world market of customers for their goods and services, and could be a major economic development strategy to grow those small businesses. The Regulatory Fairness Board and the Small Business Advocate will follow these bills closely, as changing the regulatory structure for broadband could create major new opportunities for Maine small businesses, especially in rural areas.

## **2014 Report of the Regulatory Fairness Board and the Office of the Special Advocate**

### **Activity of the Regulatory Fairness Board**

The Board is comprised of five members who are or have been owners, operators, or officers of businesses operating throughout the state. 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 must represent businesses with fewer than 50 employees and one of whom must represent businesses with fewer than 20 employees. Members of the Board volunteer their time and their unique expertise to serve as liaisons between the State's business community, regulatory authorities, and law makers. The Secretary of State is the Chair of the Board. Currently the board has one vacancy, the appointment from the Speaker of the House. A list of members is attached in Appendix B.

The board held three separate public meetings in Augusta, Lewiston and Brunswick in 2014. During the public meetings, members discuss the role and direction of the board, review tasks assigned by the governor and legislature and assesses written comments or complaints that have been received by email from members of the public or the private business community through the office of the Special Advocate.

Publicity for Regulatory Fairness Board public hearings include press releases to statewide and local papers, emails and phone calls to local chamber of commerce, state wide trade organizations, small business counselors, economic development organizations, and other potentially interested groups. The agenda for the hearings is driven by the members of the public and business community that attend. Information collected in meetings and hearings contributes to RFB's direction as the Board plans for future meetings and hearings. Minutes of those meetings are posted on the Secretary of State's website (<http://www.maine.gov/sos/sba/rfb.html>) and attached in Appendix C.

This year the board heard concerns over professional licensure, insurance licensing, repeal of the Maine Uniform Building and Energy Code, site review for redevelopment sites through DEP, sales tax collection, and uneven and inadequate expansion of broadband, especially in rural Maine. The board also discussed the problem of access to capital for small business, and the January 2014 meeting included a discussion with the Finance Authority of Maine and the Small Business Administration on the availability and issues around access to capital for small businesses.

### **Activity of the Small Business Advocate January 2014 –December 2014**

The Small Business Advocate worked with over 25 businesses to answer questions, provide information and to intercede with regulatory agencies on their behalf. The Regulatory Fairness Board has held three public meetings, in Augusta, Lewiston and Brunswick. The Annual Report was submitted to the Labor, Commerce and Economic Development Committee on February 1, 2014.

The Small Business Advocate testified or monitored at least eight bills this past legislative session. Successes include development of crowd funding rules so Maine businesses can take advantage of the recent changes in federal statute on raising funds through selling shares. Once again, there were multiple bills dealing with the state's liquor laws.

The Small Business Advocate also assisted with the development of the rule Governing the Use of Digital Signatures, worked with the Office of Investigation on the legislative report for developing a regulatory process for scrap metal dealers, and assisted with editing the Final Report of the Working Group on the Use of Bioptic or Telescopic Lenses for Testing and Driving.

A sampling of the case work:

### **Maine Revenue Services.**

Five businesses called after receiving closure notices from Maine Revenue Service (MRS) as a result of non-payment of sales taxes. The Advocate contacted MRS who worked out payment plans with all businesses, allowing them to remain open.

The advocate also assisted businesses who called with questions on how to get a retail sales certificate and other tax issues.

### **Professional and Finance Regulations (occupational licenses).**

The Advocate received a referral from a business person in eastern Maine who was unhappy with a recent decision by the Fuel Board and Electricians' Examining Board allowing non-electricians to do simple installations of heat pumps. Both boards had spent many months arriving at an agreement over this process, and felt that there was no danger to customers, and that installation of heat pumps alone should not require a licensed electrician. The Advocate informed the business on how to contact the boards regarding his complaint.

### **Regulatory Reform opportunity:**

The current professional licensure structure oftentimes presents a barrier for entry into a business. One specific example is hair braiding. This is a common business practice in Maine's immigrant community and requires being licensed by the board of Cosmetology. While the Department of Professional Licensure has no interest in regulating this type of business, current statutes make practicing hair braiding without a license a Class D crime.

The intent of professional licensure is "to protect the public's health and safety." While most professions have requested licensure by the State to create a set of professional standards – many of the professions we currently regulate and license may not need to be licensed as a profession to protect public health and safety.

One regulatory reform would be to determine which professions the state has an interest in licensing to protect public health and safety, and which professions we could regulate the

business practice instead of the individual. For example, the State does not license cooks, but we do license restaurants. Are there similar examples where the state could lower the burden and reduce the barriers to entry for small businesses by providing an alternate form of licensure that would still protect public health and safety? Senator Anne Haskell is sponsoring a bill in the 127<sup>th</sup> to deregulate hair braiding **The Regulatory Fairness Board and the Small Business Advocate endorses this change in statute.**

## **Department of Health and Human Services**

### Health Inspection Program (HIP):

One business contacted the Advocate regarding continual inspections of its restaurant by the Department of Health and Human Services. As a result of several failed inspections over the past 2 years, the Health Inspection Program had put the restaurant on a quarterly inspection schedule. The business was required to pay a fee for each additional inspection. The business had failed some of those quarterly inspections, causing additional inspections. The owner felt the inspections were unjustified and that no one else in the town was being inspected at anywhere near the same rate. The Advocate reviewed all the inspection data, and spoke with the Health Inspection Program about how this business could get off the quarterly inspection schedule. The business did make several improvements, including installation of a new water system, and passed its next inspection but would need to continue that trend for a year in order to be removed from quarterly inspections.

The same business called the Department of Economic and Community Development about a month later regarding the Health Inspection Program's requirement to have a Serve-Safe certified consultant at the restaurant during service hours. DECD was trying to set up a meeting between the business, the Health Inspection Program and the Advocate, when the business decided to sell the restaurant.

### Licensing Division:

An assisted living facility requested intervention with DHHS on their reimbursements. Fifteen years ago the facility got a convertible grant from the Maine State Housing Authority for \$100,000 to help build the facility. This grant required that the facility not take any private pay residents and all admissions must be under the income guidelines established by MSHA. This grant was convertible to a loan if the residency requirements were not met. This year the facility decided to write off the last \$33,000 of the grant. For ten years the facility has claimed depreciation on the grant in their reimbursement through DHHS. Since the grant was written off, DHHS issued an audit finding saying the facility needed to repay the \$3,333 in claimed depreciation until the entire \$100,000 was recognized. The facility asked for intervention as paying off the \$3,333 was a financial hardship.

The Advocate contacted DHHS and was informed that the rules for reimbursement specifically exclude depreciation allowances for grants. By writing off the final \$33,000 of the grant, the facility essentially converted what could have been a loan officially to a grant. That amount was



therefore unable to be depreciated and reimbursed by DHHS, thus the audit finding and the repayment requirements.

The Advocate recommended that DHHS make that portion of the rule clearer to facilities and their accountants and perhaps to disallow reimbursement from the outset on grants that were convertible to loans if certain conditions were not met. That would make the process clearer to facilities.

#### Behavioral Health Licensing:

A mental health facility's license from Behavioral Health had expired and they were not able to get an extension. Without a license they were unable to bill Medicaid for reimbursement. The Advocate contacted the Division of Licensing and Regulatory Services and was able to schedule a re-licensure inspection within 4 days, allowing the agency to go the minimum of days without being able to bill for services.

#### Plumbing Program:

A business in Winthrop contacted the Advocate about the requirement to hook-up to the town's septic treatment line. The business had just built a new facility and had under estimated the cost to connect to the sewer lines. The location of the business required it to dig up the road, into what was likely ledge – tripling the cost of the connection. The business called to see if there was any way it could install a private septic system instead of connecting to the town sewer.

The charter of the Winthrop Utilities District requires homes and businesses to connect to the sewer line if they are within 125 feet of the line. State law requires connection if you are within 200 feet, and the business is under both distances. The advocate talked with the Winthrop sewer district and Representative Craig Hickman about the possibility of a last minute statute change. Since the businesses contacted the Advocate's office in the final two days of the legislative session, a change in the law was not possible. The Advocate referred the business to the Community Development Block Grant program for a possible CDBG grant to connect to the sewer line.

### **Department of Administration and Finance Services**

#### Purchasing:

A custodial firm contacted the advocate about the change in the State policy for purchased custodial services. The company believed the current policy prohibited for-profit businesses from bidding on State government contracts to provide custodial services to buildings owned by the State unless no Certified Work Centers were interested in bidding on the work. The business also complained that the growing practice of the state was to lease buildings and to include a cleaning contract in the lease, essentially not allowing custodial firms to bid on those projects. The company felt these policies did not make sense for the State and inquired if it did make sense, why apply the policy to one type of service.

The Advocate contacted the Bureau of Purchasing who indicated that in 2007 the law was changed to require the state to bid out to Work Centers first, and if no bid was received or no bid at a reasonable price, then the work needed to be offered to the Department of Corrections. If after that process there was still no acceptable bid, then purchasing did open the bid to for-profit businesses. The Bureau of Purchasing indicated that frequently custodial bids were not taken by either Work Centers or the Department of Corrections and went out to bid. In fact, the specific bid the company used in its example was likely going out to bid the following week.

The Bureau of Purchasing indicated that when leasing space, it was common practice for the leasee – either the state or a private entity – to include requirements around building maintenance, cleaning, snowplowing and other activities to be included in the lease price. The bureau feels that this provides the state the best price for those bundled services and saves the taxpayers money.

## **Secretary of State**

### Bureau of Motor Vehicles:

The Department of Economic and Community Development referred a case where a business was unable to get a registration for a truck in a timely manner. The business had been sold in the past year and had not changed any of the titles on their fleet of trucks during the sale. The change in ownership requires that all the vehicles owned by the company be retitled with the new owner and reregistered in the International Registration Program. That process takes longer than the company had allowed for. BMV issued a temporary plate for one of the trucks and informed the company that the remainder of the fleet would have the same issue when their registrations came due in the next month.

### Corporations, Elections and Commissions:

The Advocate also answers daily calls on the various permutations on how to register as a corporate entity in Maine and reviews weekly posting of rules for potential impact on small businesses.

## **Fire Marshall**

Interactions with the Fire Marshal's office are commonplace in the Advocate's office. Two specific cases exemplify the work of the advocate in acting as a liaison between the Fire Marshall and small businesses.

The first was a restoration and conversion of an old building into a small meeting/office space with a small kitchen. The owner felt the Fire Marshall's office was not being flexible enough, considering the planned use of the building. After numerous back and forth discussions with the fire marshal, building owner and the Advocate, and agreement was finally reached that met fire code requirement and was affordable to the building owner.

The second was a restaurant in southern Maine that took over a previous location. The owner felt the Fire Marshal was being stricter with fire code interpretation for the new business than he had been for the previous businesses. The Advocate served as a liaison to connect the business owner to the Fire Marshal, so that both the Fire Marshall and the business had a better understanding of what the fire code required for the use of the building.

A horse farm in Bowdoinham contacted the Advocate about fireworks. This business had contacted the advocate previously, and at the Advocate's suggestion had gotten legislation submitted to change the fireworks statute. The bill was passed, but vetoed by the Governor. The business wrote to say that fireworks were still having a huge negative impact on the business, as it scared the horses very badly, and wanted to understand what the next step might be.

### **Legislation:**

LD 1512 – An Act to Increase Funding for Start-ups - Senator Justin Alford (PL 2013 Chapter 452) This bill created the enabling language to allow “crowd funding” in Maine. It is one of the first laws of its kind in the country which allows small shares of equity to be sold to small investors to fund start-ups. The Securities Division of the Department of Professional and Financial Regulation developed rules over the summer and the rules became effective January 1, 2015. This tool has great potential to start and grow small Maine companies. The Advocate has been invited to join an advisory group established by the Office of Securities to identify and recommend possible resolutions for issues and concerns with the new program (Fund-ME.)

LD 1603 - An Act Regarding Wet Storage Sites for Cultured Marine Organisms - Representative Mick Devin. This bill would have created a separate, shorter, lease process for oyster farmers who want to move “ready to harvest stock” down river so they could access it during the winter months, and continue to sell to customers. The bill died in nonconcurrence between the House and the Senate. However, the Department of Marine Resources did move another staff person in to aquaculture leasing to speed up the regulatory process, which often takes upwards of two years.

LD 1565 - An Act To Preserve Code Enforcement Officer Training and Certification – Representative Mike Carey. This bill would have moved Code Enforcement Training from the Department of Economic and Community Development to the Department of Environmental Protection. Code enforcement is the first interaction a business has when it is setting up operations in a community. When the State Planning Office was dismantled, CEO training was moved to DECD, with no accompanying resources. With no position in charge of training, DECD was doing what it could, but the lack of a CEO and third party training certification would have a major impact on small businesses. The bill was passed with a fiscal note to fund at least part of the activities of the CEO training, and was incorporated into the budget.

### **Presentations and meetings:**

The Advocate attended, participated or met with the following: Kennebec Leadership Institute, Envision Maine, Maine International Trade Center, Start-up and Create Week, Portland, Maine Marine Composites Association, Brunswick Landing, Women Work and Community, Finance

Authority of Maine, Maine Technology Institute, Oxford Hills High School Civics Class project, United States' Small Business Administration, Maine Agricultural Trade Show, Women Business Development Commission monthly networking meetings.

**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: 2014 Regulatory Fairness Board Members

### **Secretary of State Matthew Dunlap – *Chairman***

Nash School Building, 103 Sewall St.  
148 State House Station  
Augusta, Maine 04333-0148  
Office: 207.626.8400  
Email: matthew.dunlap@maine.gov

### Appointed by Governor Paul R. LePage:

#### **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](http://www.maine.gov/sos/sba/rfb.html)

### **Vacant**

### Appointed by Senate President Justin Alford:

#### **Hon. David Brenerman**

32 Overset Road  
Portland ME 04103  
Office: 207.807.4053 Home 207.797.9298  
Email: david@brenermanconsulting.com

### Appointed by House Speaker Mark Eves:

#### **Stephen Rich**

374 Hudson Road  
Glenburn Maine 04401  
Phone 207.745.8572  
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### Staff:

#### **Peggy Schaffer, Small Business Advocate**

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Information about the Small Business Advocate  
may be found at: [www.maine.gov/sos/sba](http://www.maine.gov/sos/sba)

## **Appendix C: Minutes of the Regulatory Fairness Board Meetings**

January 22, 2014 9:00 – 10:45 a.m.  
Nash School, Augusta, ME

### Attendees:

Regulatory Fairness Board Secretary of State Matthew Dunlap, Chair  
David Brenerman  
Pat Kuhn (by phone)  
Hon. Doug Smith was unable to attend

### Guests:

Marilyn Geroux, Small Business Administration (SBA)  
Charlie Emmons, Finance Authority of Maine

Debbie French (SOS IS Office) provided access through Go To Meeting for people unable to attend the meeting.

At the Board's request, Marilyn Geroux and Charlie Emmons attended to talk about the issues raised by the Board at the October meeting around access to capital for small businesses.

The Small Business Administration (SBA) provides no direct loans and usually works with banks to provide loan guarantees to small businesses, which helps small businesses that would not otherwise qualify to get a bank loan. In an effort to spur the economy between October 2013 and September 2014, the SBA will eliminate the fees on loans less than \$150,000 to get the lenders to lend and borrowers to borrow. The Veteran's Advantage program will loan up to \$350,000 with no fees. The SBA also helps with disaster recovery for small businesses.

The SBA also lends to Community Development organizations that can then turn around and use those funds for small loans (\$500 - \$50,000). Coastal Enterprises Inc. (CEI) is the state's largest micro-lender, but other groups like Androscoggin Council of Governments, Northern Maine Development Commission, Community Concepts and Main Street Capital also work in the micro-lending area.

The Finance Authority of Maine also provides loan guarantees insuring 92% of a loan up to \$4 million. They work with all the banks and some credit unions on loan guarantees. In addition, FAME does direct loans through a variety of business programs, including the Economic Recovery Loan program, which can help a business that is in some financial trouble or small start-ups. It also has money targeted at specific sectors or business owner – agriculture or Veterans for example, which gives FAME a lot of flexibility in working with business owners.

FAME also administers the Seed Tax Credit, which encourages investors to invest in small companies with high growth potential. Maine also has a venture capital fund, Maine Ventures, which uses state funds to leverage private equity funds to grow high growth potential businesses.

Coastal Enterprises Inc. (CEI) also has a wide variety of funding options, including New Markets Tax Credits, direct loans to businesses – both traditional and micro. Their focus is on natural resourced based businesses - specifically in the agriculture, forestry and fishing. The Regional Economic Development Loan program is another state funded revolving loan program operated through thirty regional economic development agencies. All of these programs are loan programs, so the business owner needs to demonstrate they will be able to pay the loan back.

The SBA also is part of a state and private partnership that funds the Small Business Development Centers. The SBDC has sixteen or more small business counselors across the state who work with small businesses owners to develop a business plan, marketing strategy and help them figure out their finances – including options for funding. Maine also has Women Work and Community that provides small business counselling and career planning.

Maine also has the Community Development Block Grant program that can help small companies that are creating jobs with loans or grants, if they meet the federal criteria. The grants, which flow through municipalities, usually help with basic infrastructure for communities, like water and sewer capacity, fire stations and other community buildings. The funds have also been used for pier reconstruction, downtown development, and expansion of housing opportunities for low to moderate income Mainers.

Finally, Maine has the Maine Technology Institute that can help companies that have a new product, service, or production method test it out, figure out the market, develop a prototype and other small projects. MTI's development awards are patient capital that can support the commercialization of new technologies or products.

Mr. Emmons and Ms. Geroux noted that the biggest obstacle to funding small businesses is lack of a good business plan, including not understanding their company's financials, bad credit, no down payment, and an inadequate marketing strategy. Banks, even FAME and SBA, want to know how they are going to get paid back. This is one of the key reasons the SBA helps fund the Small Business Development Centers.

The board thanked Mr. Emmons and Ms. Geroux for their very informative discussion.

The Board then talked about the agenda for the upcoming year, which includes an appointment from the Speaker of the House, and possible locations for the public sessions. The board agreed to try to schedule around meeting that were already happening or working with local chambers to get better attendance from the community businesses.

Meeting was adjourned at 10:45 a.m.

June 3 2015 – 8:00 -9:30 am  
Androscoggin Valley Chamber of Commerce Office.

Attending:  
Regulatory Fairness Board:  
Secretary of State Matthew Dunlap, Chair  
Stephen Rich  
David Brenerman  
Pat Kuhn

Public:  
Rep. Wayne Werts  
Michelle Geradine  
Patty Gagne  
Gail Kazek - Sen. King's office  
Rep. Peggy Rotundo.

Debbie French, IT support for Go to Meeting. One person (Doug Dunbar, Professional and Finance Regulation) attended via Go to Meeting.

Secretary Dunlap provided an overview of the responsibilities of the board and its charge.

Gail Kazek noted Sen. King has a website that allows small businesses to send in comments and thoughts on federal regulation, which have grown greatly – especially in the area of financial regulations.

The issues brought forward by area businesses included insurance licensure testing, that the insurance licensure test is not logical. The issue brought forward was that the test should be more straight forward and with less ambiguity. This complaint was forwarded to the Department of Professional Regulation.

Rep. Werts expressed concern that the EMT testing is all computerized, and is pass/fail, and often the test taker does not know the results for several months after taking the test.

Concerns were raised about licensure of professions in general and how it is often the actual professionals in that field that requests the licensure, not the state. The group also discussed how the profession sometimes uses licensure to limit competition from entering the field. Regulatory Fairness Board member Pat Kuhn noted she thought the State should not license cosmetologist and barbers at all.

The board and attendees also talked about how to increase participation of small businesses in the RFB meetings. One suggestion is to continue to connect with area chambers to co-host the public listening sessions.

Follow up: The Small Business Advocate's office will be implementing a simple web-based form to solicit comments and thoughts on state regulatory issues in February of 2015.

October 28<sup>th</sup> 2014, 8:00 – 10:00 am

Brunswick co-hosted by the Southern MidCoast Chamber of Commerce.

Attendees:

Regulatory Fairness Board:

Secretary of State Matthew Dunlap Chair

David H. Brenerman

Patricia Kuhn

Stephen Rich

Public:

Tim Sardano – Maine Department of Labor

Curt Neufeld – SiteLine PA

Linda Smith – Town of Brunswick

Marilyn Geroux – Small Business Administration

Eric Wilson – The Water Doctors

Jack Meehan – J Meehan Construction

Senator Eloise Vitelli - Women Work and Community

Brian Doyle – Maine Department of Economic and Community Development

Carolyn Farkas-Nue - Southern Midcoast Chamber of Commerce

Charlie Huntington – I & S Insulation, Wiscasset

Fletcher Kittredge - GWI

After introductions, Charlie Huntington presented on behalf of the Maine Contractors and Builders Alliance, (MCBA) asking for the reinstatement of the statewide Maine Building and Energy Code (MUBEC.) MCBA represents 120 members predominately in the Mid-Coast area of Maine.

MCBA believes that the uneven adoption of MUBEC is harmful to their businesses because it creates an uneven playing field where contractors are able to undercut each other in towns without a building code by not bidding to build a project to code. This ultimately hurts the consumer, who may not know the difference in the bids is based on one bid potentially not meeting a national recognized building code.

The MCBA maintains that having different jurisdictions with different, or no building code, is inefficient and more expensive for small construction firms. It places an undue burden on these small businesses to try to decipher which code they are working with in each community.

MCBA also believes it is bad for the consumers, who may be spending hard earned money on a building that does not meet any minimum standards and also is not energy efficient.

MCBA would like the Regulatory Fairness Board to consider backing the reinstatement of the statewide MUBEC for all communities, no matter what population. The cost to the towns can be minimized by the use of third party inspectors, currently in law and for which the home owner pays, to determine if the building is meeting the code.

Curt Neufeld of Sitelines PA brought forward an issue with the site review process at Department of Environmental Protection for lots that are "infill" or reuse. Neufeld pointed out that the process for review can take, by law, up to 180 days. For someone who is redeveloping a site with smaller lots, this can mean the loss of a complete selling and or construction season. Neufeld clarified that what he was

speaking about was the subdivision of lots on property that is being re-developed, and where the environmental impacts were mainly storm water runoff. He feels that the review process for reuse of a site (in the case he was speaking about, a reuse of an old quarry in Auburn), should be shorter, or “leaner” than the process for developing a “greenfield.” In short, the review on the reuse of an empty blighted site should be shorter, and cost less than the development of a new site, if there are no significant resource impacts other than managing storm water runoff.

In the case of the “Brownfield” redevelopment, he also would like to see changes in permits to allow the owner to undertake the work needed to make the site useable at their own risk, before the site review is approved. He believes the fees should be lowered to represent the work required on a redevelopment of a Brownfield or infill development vs. the creation of a brand new subdivision on new, previously unused land.

Mr. Nuefield also expressed concerns over the “recreational fee” Brunswick has in place for the development of residential lots. He believes there should be more flexibility in applying that recreational fee, especially if the project is an “infill” development that has ready access to existing recreational space.

Other issues were raised around businesses that get behind on their sales tax payment and the inflexibility of Maine Revenue Services on negotiating the interest and fees associated with those late payments. It was pointed out that MRS has no flexibility in statute for waiving or reducing interest or fees. If a business knows they are going to get behind on their payments of sales or other taxes, their first call should be to MRS who will work out a payment plan with them in advance. It was also noted that the inability to pay sales tax the business has collected is often symptomatic of other issues. The state has a variety of business support services that are free that can assist a business dig out of a financial hole before it becomes too deep.

A business person also expressed concern that while he regularly pays use tax on items he purchases out of state which are used in his business, the company he purchases them from is being audited by MRS. His supplier is requesting a resale certificate which he does not have since his business does not sell items. MRS is asking the out of state supplier to provide records of sales in-state to prove they have charged sales tax. While this business has record of use tax being paid to MRS for those supplies, those records do not seem to be enough for what the MRS is looking for from his supplier. In addition, MRS is looking back 7-10 years, and that is a lot of back tracking through paperwork for this company.

Fletcher Kittredge joined the meeting late to talk about the regulatory issues around expanding broadband. Those include poll attachment and the definition of broad band by the State and service providers. Since many of the Regulatory Fairness Board had other appointments and could not stay, the board agreed to have Mr. Kittredge come and talk at a board meeting at a later time.