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2019 Report of the Regulatory Fairness Board

to

The Honorable Janet T. Mills, Governor

State of Maine

and

the Joint Standing Committee on Innovation, Development, Economic

Advancement and Business

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 report to the Governor and the Legislature 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 Department of the Secretary of State and the Office of the Special Advocate was created to, in part, staff the board (Appendix A.)

The Regulatory Fairness Board is comprised of five members who are, or have been owners, operators or officers of businesses operating in Maine. The board hears public comments from Maine businesses concerning interactions between their businesses, government agencies and specific State regulations which have a serious impact on them. 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. Also discussed, are administrative and operational purposes and public comments that are received in writing.

This report summarizes the board's activities during the year 2019, including information presented to the board and its resulting recommendations.

The Regulatory Fairness Board held no public meetings during 2019.

The Small Business Advocate worked with three Maine businesses in 2019. Generally, the Advocate provides answers to questions, provides requested information and intercedes with regulatory agencies on their behalf. The work encompasses a wide range of issues and interactions with nearly every agency in State government. This report includes a brief sampling of the office work and the Regulatory Fairness Board.

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

Business to Business Assistance

The State of Maine has no direct business to business protection or advocacy and is similar to the service provided by the Office of the Attorney General Consumer Protection Division. This is a significant gap in our business assistance programs. The Advocate and the Consumer Protection Division both receive calls from businesses that are having a variety of issues with other businesses. These are usually larger, out of State companies that Maine based businesses feel are taking advantage of their size and resource differences.

The Advocate and the Consumer Protection Division is not charged with and does not have the authority to provide assistance with these kinds of conflicts. Creating a division similar to the Consumer Protection Division at the Office of the Attorney General, specifically for business to business conflicts, is an idea the legislature should consider pursuing. Companies that provide credit card processing services for small businesses are the largest source of these complaints. Issues include overcharging, adding excessive fees and at times, unauthorized withdrawals from small business bank accounts. This results in bank fees and often requires the small business to close and reopen accounts so the credit card processing company no longer has access to their information. While the Maine Bureau of Financial Institutions can notify these credit card processing companies, they have no regulatory authority over them.

Broadband Expansion

Lack of access to any broadband or high-speed internet creates major difficulties for small businesses in our State when attempts are made to gain access to customers, markets, on-line business support services and much more. This limits growth of existing businesses and the start-up of new businesses.

Maine has made incremental investments to expand broadband service to unserved areas of the State over the past thirteen years through ConnectME. That effort has created opportunities for small ISP companies to expand their services, grow and add employees. It has also created an opportunity for businesses that do GIS mapping or survey existing broadband services to also grow and add new employment. The world is changing and Maine can no longer afford to incrementally expand broadband a few miles at a time each year.

At the Federal level, the USDA Rural Development has piloted a ReConnect program to bring service to areas of the country that have little or no connections. Maine had four applications submitted for this program which are still pending. There will be an additional two years of funding for this program. This is a significant opportunity to bring in federal funds to support building connectivity.

Maine needs to make a significant investment in the expansion of broadband to under and unserved areas of the State. This can be done by using State funds to assist with strategic projects which bring down the cost of expanding broadband so that private companies, regions, counties or municipalities can take on the “last mile” and bring broadband to their communities.

Expansion of broadband to many rural areas of this State will never make economic sense to private companies unless the State provides revenue to lower the cost. Local communities face the same challenge when they seek to build out broadband to their citizens. Absent some higher level of State funding for broadband deployment, all of Maine, but particularly rural Maine, cannot participate in the global economy.

Important Public Feedback

The Small Business Advocate's webpage includes a web-based feedback form. The intent of the form is to make it easier to gather and track information from businesses that are having regulatory difficulty. This allows small businesses to identify regulations, rules and statutes which potentially create an undo regulatory burden. The web form went live in February 2015.

2019 Report of the Regulatory Fairness Board And the Office of the Small Business 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 which are 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 unique expertise to serve as liaisons between the State's business community, regulatory authorities, and lawmakers. The Secretary of State serves as the Chair of the board. Currently the board has one vacancy, an appointment which is made by the Governor. A list of members is included in Appendix B.

The board held no meetings in 2019.

Activity of the Small Business Advocate January 2019 –December 2019

The Small Business Advocate assisted three businesses answering questions, providing information and interceding with regulatory agencies on their behalf. The 2019 Annual Report was submitted to the Joint Standing Committee on Labor, Commerce and Economic Development Committee on February 1, 2020.

The Small Business Advocate accepted a position as the Director of ConnectME at the Department of Economic and Community Development.

Case Work Sampling

Small Business Inquiring on Financial Assistance with Handicap Accessibility

A small business owner in Franklin County contacted the office asking if there were grants or programs available to assist them in moving their existing business to a new location with handicap accessibility.

Taxpayer Issue

A caterer, for an unknown reason, decided in 2017 there was a law change and the business was no longer required to charge sales tax on labor. As a result, MRS requested an audit. Instead of meeting with MRS, the caterer hired a lawyer and postponed the audit. The advocate met with MRS. Until MRS conducted an audit, they would not be able to determine if in fact money was owed or provide possible payment options. Maine Revenue Services also informed taxpayers by bulletin, which made it clear that the law was not changed. The caterer finally agreed to the audit. The caterer acknowledged not actually reading the bulletin.

Corporation Filing

There was a small business inquiry with questions regarding filing corporation papers with the State of Maine.

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 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 and when an alternative means of effective enforcement is possible, a recommendation to the Secretary of State would be made in which the Secretary would 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: 2019 Regulatory Fairness Board Members

Secretary of State Matthew Dunlap, Chair

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103 Sewall Street, 148 SHS
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Appointed by the Governor

Ms. Patricia Kuhl

Owner, P K Associates
22 Tarratine Drive
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Office: 207-729-2260 Home: 207-729-5229
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Expired: 12/2014

Appointed by the Governor

Vacant

Appointed by the Senate President

Lisa Ptak

PO Box 2015
Lewiston, ME 04241
Expired: 10/2019

Appointed by the House Speaker

Stephen Rich

374 Hudson Road
Glenburn, ME 04401
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Staff

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Information about the Small Business Advocate
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