

MAINE STATE LEGISLATURE

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L.D. 1764

Date: 3/28/2018

(Filing No. S-426)

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STATE OF MAINE
SENATE
128TH LEGISLATURE
SECOND REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1218, L.D. 1764, Bill, "An Act To Streamline Advocacy for Maine Small Businesses by Relocating the Bureau of the Special Advocate within the Department of the Secretary of State to the Department of Economic and Community Development"

Amend the amendment by striking out everything after the title and inserting the following:

'Amend the bill by striking out the title and substituting the following:
'An Act To Streamline Advocacy for Maine Small Businesses by Eliminating the Bureau of the Special Advocate within the Department of the Secretary of State and Transferring Its Duties to the Department of Economic and Community Development'

Amend the bill in section 2 in subsection 2-G in the 3rd line (page 1, line 7 in L.D.) by striking out the following: "13063-Y" and inserting the following: '13100-D'

Amend the bill by striking out all of section 3 and inserting the following:

'Sec. 3. 5 MRSA §13031, sub-§6 is enacted to read:

6. Small Business and Entrepreneurship Special Advocate. "Small Business and Entrepreneurship Special Advocate" means the Director of the Office of Small Business and Entrepreneurship as described in section 13100.

Sec. 4. 5 MRSA §13033, as amended by PL 2007, c. 585, §1, is further amended to read:

§13033. Membership

The commission consists of 9 members: the Chief Executive Officer of the Finance Authority of Maine or the chief executive officer's designee; the ~~Commissioner of Economic and Community Development or the commissioner's designee~~ Small Business and Entrepreneurship Special Advocate; the House and Senate chairs of the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters, who are ex officio, nonvoting members; the chair of the Small Business Development Centers Advisory Council; and a designee from the administrative

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SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1218, L.D. 1764

1 unit and 3 public members with expertise and knowledge in small business and
2 entrepreneurship, appointed by the commissioner.

3 **Sec. 5. 5 MRSA §13100**, as enacted by PL 2005, c. 458, §2, is amended to read:

4 **§13100. Small Business and Entrepreneurship**

5 The commissioner shall create within existing budgeted resources the Office of Small
6 Business and Entrepreneurship and appoint a director to operate the office and serve as
7 the Small Business and Entrepreneurship Special Advocate.

8 **1. Director.** The director reports to the commissioner. The director is responsible
9 for advocacy, policies and programs that stimulate investment and growth in small
10 business and entrepreneurship. The director is the liaison to the public for gubernatorial
11 initiatives on small business and entrepreneurship. The director must be hired pursuant to
12 the Civil Service Law for classified state employees.

13 **2. Duties.** The director shall:

14 A. Advocate for small business and entrepreneurship throughout all levels of State
15 Government;

16 B. Assist in the oversight and auditing of the State's investments in small business
17 and entrepreneurship initiatives, programs and service providers;

18 C. Chair the Maine Entrepreneurship Working Group, which shall act as the advisory
19 group to the Maine Small Business and Entrepreneurship Commission and
20 subsequently the department;

21 D. Prepare a biennial state of small business and entrepreneurship report to the
22 Legislature; ~~and~~

23 E. Oversee the Business Answers program, the Maine Products Marketing Program
24 and other department programs and initiatives relevant to small business and
25 entrepreneurship; ~~and~~

26 F. Resolve agency enforcement actions affecting small businesses pursuant to this
27 chapter.

28 **3. Definitions.** As used in this subchapter, unless the context otherwise indicates,
29 the following terms have the following meanings.

30 A. "Agency" has the same meaning as in section 8002, subsection 2.

31 B. "Agency enforcement action" means an enforcement action initiated by an agency
32 against a small business.

33 C. "Complaint" means a request to the director for assistance under section 13100-A.

34 D. "Director" means the Director of the Office of Small Business and
35 Entrepreneurship.

36 E. "Regulatory impact notice" means a written notice from the commissioner to the
37 Governor as provided in section 13100-C.

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1 F. "Significant economic hardship" means a hardship created for a small business by
2 a monetary penalty or license suspension or revocation imposed by an agency
3 enforcement action that appears likely to result in the:

4 (1) Temporary or permanent closure of the small business; or

5 (2) Termination of employees of the small business.

6 G. "Small business" means a business having 50 or fewer employees in the State.

7 **Sec. 6. 5 MRSA §§13100-A to 13100-D** are enacted to read:

8 **§13100-A. Small business requests for assistance**

9 A small business may file a complaint requesting the assistance of the director in any
10 agency enforcement action initiated against that small business. The director may provide
11 assistance to the small business in accordance with section 13100-B. The director shall
12 encourage small businesses to request the assistance of the director as early in the
13 regulatory proceeding as possible. Before providing any assistance, the director shall
14 provide a written disclaimer to the small business stating that the director is not acting as
15 an attorney representing the small business, that no attorney-client relationship is
16 established and that no attorney-client privilege can be asserted by the small business as a
17 result of the assistance provided by the director under this subchapter.

18 **§13100-B. General advocacy**

19 1. Director may advocate. The director may advocate generally on behalf of small
20 business interests by commenting on rules proposed under chapter 375, testifying on
21 legislation affecting the interests of small businesses, consulting with agencies having
22 enforcement authority over business matters and promoting the services provided by the
23 director.

24 2. Powers of director upon receipt of complaint. Upon receipt of a complaint
25 requesting assistance under section 13100-A, the director may:

26 A. Consult with the small business that filed the complaint and with the staff in the
27 agency that initiated the agency enforcement action to determine the facts of the case;

28 B. After reviewing the complaint and discussing the complaint with the small
29 business and the agency that initiated the agency enforcement action, determine
30 whether, in the opinion of the director, the complaint arises from an agency
31 enforcement action that is likely to result in a significant economic hardship to the
32 small business;

33 C. If the director determines that an agency enforcement action is likely to result in a
34 significant economic hardship to the small business, seek to resolve the complaint
35 through consultation with the agency that initiated the agency enforcement action and
36 the small business and through participation in related regulatory proceedings in a
37 manner allowed by applicable laws; and

38 D. If the director determines that an agency enforcement action applies statutes or
39 rules in a manner that is likely to result in a significant economic hardship to the
40 small business when an alternative means of effective enforcement is possible,

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1 recommend to the commissioner that the commissioner issue a regulatory impact
2 notice to the Governor. If an alternative means of effective enforcement is not
3 possible, the director may consult with department staff and other agency business
4 liaisons to determine whether the agency enforcement action can be conducted in
5 such a manner as to minimize potential damage to the State's economic
6 competitiveness.

7 **§13100-C. Regulatory impact notice**

8 At the recommendation of the director, the commissioner may issue a regulatory
9 impact notice to the Governor informing the Governor that an agency has initiated an
10 agency enforcement action that is likely to result in significant economic hardship to a
11 small business when an alternative means of enforcement was possible, and asking that
12 the Governor take action, as appropriate and in a manner consistent with all applicable
13 laws, to address the small business issues raised by that agency enforcement action. The
14 regulatory impact notice may include, but is not limited to, a description of the role of the
15 director in attempting to resolve the issue with the agency, a description of how the
16 agency enforcement action will affect the interests of the small business and a description
17 of how an alternative enforcement action, when permitted by law, would relieve the small
18 business of the significant economic hardship expected to result from the agency
19 enforcement action. The commissioner shall provide a copy of the regulatory impact
20 notice to the agency that initiated the agency enforcement action, the small business that
21 made the complaint and the joint standing committee of the Legislature having
22 jurisdiction over business matters.

23 **§13100-D. Regulatory Fairness Board**

24 The Regulatory Fairness Board, as established in section 12004-I, subsection 2-G and
25 referred to in this section as "the board," is established within the department to hear
26 testimony and to report to the Legislature and the Governor at least annually on
27 regulatory and statutory changes necessary to enhance the State's business climate.

28 **1. Membership.** The board consists of the commissioner or the commissioner's
29 designee, who shall serve as the chair of the board, and 4 public members who are
30 owners, operators or officers of businesses operating in different regions of the State,
31 appointed as follows:

32 A. One public member appointed by the President of the Senate;

33 B. One public member appointed by the Speaker of the House; and

34 C. Two public members appointed by the Governor, one of whom represents a
35 business with fewer than 50 employees and one of whom represents a business with
36 fewer than 20 employees.

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

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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 2 times a year to review complaints submitted to the director;

B. Review the status of complaints filed with the director and regulatory impact notices issued pursuant to section 13100-C by the commissioner; 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 director and the commissioner 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 director shall staff the board.'

Amend the bill by inserting after section 4 the following:

'Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF

Maine Small Business and Entrepreneurship Commission 0675

Initiative: Provides funds for one Public Service Manager I position to serve as the Director of the Office of Small Business and Entrepreneurship and the Small Business and Entrepreneurship Special Advocate effective February 1, 2019.

| GENERAL FUND | 2017-18 | 2018-19 |
|-------------------------------|---------|------------|
| POSITIONS - LEGISLATIVE COUNT | 0.000 | 1.000 |
| Personal Services | \$0 | \$41,993 |
| All Other | \$0 | (\$14,975) |
| GENERAL FUND TOTAL | \$0 | \$27,018 |

| ECONOMIC AND COMMUNITY DEVELOPMENT, DEPARTMENT OF | 2017-18 | 2018-19 |
|---|---------|---------|
| DEPARTMENT TOTALS | 2017-18 | 2018-19 |

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SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1218, L.D. 1764

| | | | |
|----|--|----------------|-------------------|
| 1 | GENERAL FUND | \$0 | \$27,018 |
| 2 | | | |
| 3 | DEPARTMENT TOTAL - ALL FUNDS | \$0 | \$27,018 |
| 4 | SECRETARY OF STATE, DEPARTMENT OF | | |
| 5 | Administration - Motor Vehicles 0077 | | |
| 6 | Initiative: Reduces funding due to transferring the Special Advocate position to the | | |
| 7 | Department of Economic and Community Development. | | |
| 8 | HIGHWAY FUND | 2017-18 | 2018-19 |
| 9 | Personal Services | \$0 | (\$27,020) |
| 10 | All Other | \$0 | (\$1,450) |
| 11 | | | |
| 12 | HIGHWAY FUND TOTAL | \$0 | (\$28,470) |
| 13 | Bureau of Administrative Services and Corporations 0692 | | |
| 14 | Initiative: Reduces funding due to transferring the Special Advocate position to the | | |
| 15 | Department of Economic and Community Development. | | |
| 16 | GENERAL FUND | 2017-18 | 2018-19 |
| 17 | Personal Services | \$0 | (\$27,018) |
| 18 | | | |
| 19 | GENERAL FUND TOTAL | \$0 | (\$27,018) |
| 20 | SECRETARY OF STATE, DEPARTMENT OF | | |
| 21 | DEPARTMENT TOTALS | 2017-18 | 2018-19 |
| 22 | | | |
| 23 | GENERAL FUND | \$0 | (\$27,018) |
| 24 | HIGHWAY FUND | \$0 | (\$28,470) |
| 25 | | | |
| 26 | DEPARTMENT TOTAL - ALL FUNDS | \$0 | (\$55,488) |
| 27 | SECTION TOTALS | 2017-18 | 2018-19 |
| 28 | | | |
| 29 | GENERAL FUND | \$0 | \$0 |
| 30 | HIGHWAY FUND | \$0 | (\$28,470) |
| 31 | | | |
| 32 | SECTION TOTAL - ALL FUNDS | \$0 | (\$28,470) |

33 **Sec. 6. Effective date.** This Act takes effect February 1, 2019.''

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SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1218, L.D. 1764

1 Amend the amendment by relettering or renumbering any nonconsecutive Part letter
2 or section number to read consecutively.

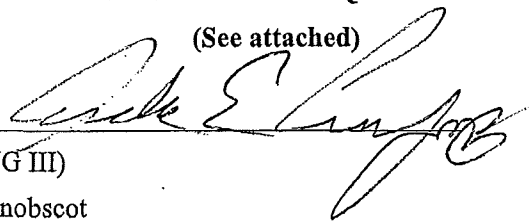
3 **SUMMARY**

4 This amendment replaces Committee Amendment "A." The amendment removes the
5 provisions of the bill that relocate the Bureau of the Special Advocate from the
6 Department of the Secretary of State to the Department of Economic and Community
7 Development. Instead, the changes in the amendment provide for the elimination of the
8 bureau. The amendment designates the Director of the Office of Small Business and
9 Entrepreneurship in the Department of Economic and Community Development as the
10 Small Business and Entrepreneurship Special Advocate and assigns to the director the
11 duties assigned in the bill to the Bureau of the Special Advocate. The amendment names
12 the Small Business and Entrepreneurship Special Advocate as a member of the Small
13 Business and Entrepreneurship Commission in place of the Commissioner of Economic
14 and Community Development or the commissioner's designee. The amendment retains
15 the provisions of the bill that relocate the Regulatory Fairness Board from the Department
16 of the Secretary of State to the Department of Economic and Community Development.
17 The amendment provides an effective date for the legislation of February 1, 2019. It adds
18 an appropriations and allocations section.

19 **FISCAL NOTE REQUIRED**

20 (See attached)

21 SPONSORED BY:
22 (Senator CUSHING III)
23 COUNTY: Penobscot



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128th MAINE LEGISLATURE

LD 1764

LR 2735(03)

An Act To Streamline Advocacy for Maine Small Businesses by Relocating the Bureau of the Special Advocate within the Department of the Secretary of State to the Department of Economic and Community Development

Fiscal Note for Senate Amendment "A" to Committee Amendment "A"

Sponsor: Sen. Cushing of Penobscot

Fiscal Note Required: Yes

Fiscal Note

| | FY 2017-18 | FY 2018-19 | Projections FY 2019-20 | Projections FY 2020-21 |
|-----------------------------------|------------|------------|---------------------------|---------------------------|
| Net Cost (Savings) | | | | |
| General Fund | \$0 | (\$39,535) | (\$26,975) | (\$26,975) |
| Highway Fund | \$0 | \$39,852 | \$0 | \$0 |
| Appropriations/Allocations | | | | |
| General Fund | \$0 | (\$39,535) | (\$26,975) | (\$26,975) |
| Highway Fund | \$0 | \$39,852 | \$0 | \$0 |

Fiscal Detail and Notes

This amendment designates the Director of the Office of Small Business and Entrepreneurship as the Small Business and Entrepreneurship Special Advocate within the Department of Economic and Community Development (DECD) and establishes an effective date of February 1, 2019. The incremental impact of delaying the effective date is a General Fund savings of \$39,535 and a Highway Fund cost of \$39,852 in fiscal year 2018-19.

As amended, the bill includes a General Fund appropriation of \$27,018 to the Maine Small Business and Entrepreneurship Commission program within DECD for one Public Service Manager 1 position to serve as the Director of the Office of Small Business and Entrepreneurship and the Small Business and Entrepreneurship Special Advocate. The full-year cost of the position is estimated to be \$104,406 in fiscal year 2019-20 and \$107,074 in fiscal year 2020-21.

As amended, the bill also includes a General Fund deappropriation of \$27,018 and a Highway Fund deallocation of \$28,470 in fiscal year 2018-19 to the Department of Secretary of State due to the Special Advocate position being transferred to DECD.