

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1764

H.P. 1218

House of Representatives, January 3, 2018

**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**

Submitted by the Department of Economic and Community Development pursuant to Joint Rule 203.

Reference to the Committee on State and Local Government suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative STETKIS of Canaan.

Cosponsored by Representatives: FARRIN of Norridgewock, PICCHIOTTI of Fairfield.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA c. 5, sub-c. 2**, as amended, is repealed.

3 **Sec. 2. 5 MRSA §12004-I, sub-§2-G**, as amended by PL 2011, c. 304, Pt. D, §3,
4 is further amended to read:

5 **2-G.**

6 Business Regulatory Fairness Expenses Only 5 MRSA §~~90-F~~
7 Board 13063-Y

8 **Sec. 3. 5 MRSA c. 383, sub-c. 2, art. 2-D** is enacted to read:

9 **ARTICLE 2-D**

10 **SPECIAL ADVOCATE**

11 **§13063-S. Bureau established**

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

16 **§13063-T. Definitions**

17 As used in this article, unless the context otherwise indicates, the following terms
18 have the following meanings.

19 **1. Agency.** "Agency" has the same meaning as in section 8002, subsection 2.

20 **2. Agency enforcement action.** "Agency enforcement action" means an
21 enforcement action initiated by an agency against a small business.

22 **3. Complaint.** "Complaint" means a request to the special advocate for assistance
23 under section 13063-V.

24 **4. Regulatory impact notice.** "Regulatory impact notice" means a written notice
25 from the commissioner to the Governor as provided in section 13063-X.

26 **5. Significant economic hardship.** "Significant economic hardship" means a
27 hardship created for a small business by a monetary penalty or license suspension or
28 revocation imposed by an agency enforcement action that appears likely to result in the:

29 A. Temporary or permanent closure of the small business; or

30 B. Termination of employees of the small business.

1 **6. Small business.** "Small business" means a business having 50 or fewer
2 employees in the State.

3 **7. Special advocate.** "Special advocate" means the person appointed pursuant to
4 section 13063-U.

5 **§13063-U. Special advocate; appointment and qualifications**

6 The commissioner shall appoint a special advocate to carry out the purposes of this
7 article. The special advocate shall serve at the pleasure of the commissioner.

8 **§13063-V. Small business requests for assistance**

9 A small business may file a complaint requesting the assistance of the special
10 advocate in any agency enforcement action initiated against that small business. The
11 special advocate may provide assistance to the small business in accordance with section
12 13063-W, subsection 2. The special advocate shall encourage small businesses to request
13 the assistance of the special advocate as early in the regulatory proceeding as possible.
14 Before providing any assistance, the special advocate shall provide a written disclaimer to
15 the small business stating that the special advocate is not acting as an attorney
16 representing the small business, that no attorney-client relationship is established and that
17 no attorney-client privilege can be asserted by the small business as a result of the
18 assistance provided by the special advocate under this article.

19 **§13063-W. Power and duties of the special advocate**

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

25 **2. Advocate on behalf of an aggrieved small business.** Upon receipt of a
26 complaint requesting assistance under section 13063-V, the special advocate may:

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

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

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

1 D. If the special advocate determines that an agency enforcement action applies
2 statutes or rules in a manner that is likely to result in a significant economic hardship
3 to the small business when an alternative means of effective enforcement is possible,
4 recommend to the commissioner that the commissioner issue a regulatory impact
5 notice to the Governor. If an alternative means of effective enforcement is not
6 possible, the special advocate may consult with department staff and other agency
7 business liaisons to determine whether the agency enforcement action can be
8 conducted in such a manner as to minimize potential damage to the State's economic
9 competitiveness.

10 **§13063-X. Regulatory impact notice**

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

26 **§13063-Y. Regulatory Fairness Board**

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

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

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

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

37 C. Two public members appointed by the Governor, one of whom represents a
38 business with fewer than 50 employees and one of whom represents a business with
39 fewer than 20 employees.

40 The commissioner shall inform the joint standing committee of the Legislature having
41 jurisdiction over business matters in writing upon the appointment of each member.

1 Except for the commissioner, an officer or employee of State Government may not be a
2 member of the board.

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

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

8 **4. Duties of board.** The board shall:

9 A. Meet at least 2 times a year to review complaints submitted to the special
10 advocate;

11 B. Review the status of complaints filed with the special advocate and regulatory
12 impact notices issued pursuant to section 13063-X by the commissioner; and

13 C. Report annually by February 1st to the Governor and the joint standing committee
14 of the Legislature having jurisdiction over business matters on actions taken by the
15 special advocate and the commissioner to resolve complaints concerning agency
16 enforcement actions against small businesses. The report may also include
17 recommendations for statutory changes that will bring more clarity, consistency and
18 transparency in rules affecting the small business community.

19 **5. Compensation.** Board members are entitled to compensation only for expenses
20 pursuant to section 12004-I, subsection 2-G.

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

22 **Sec. 4. Transition.** Members serving on the Regulatory Fairness Board,
23 established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 2-G, on the
24 effective date of this Act continue to serve for the remainder of the terms for which they
25 were appointed.

26 **SUMMARY**

27 This bill relocates the Bureau of the Special Advocate from the Department of the
28 Secretary of State to the Department of Economic and Community Development.