

MAINE STATE LEGISLATURE

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**2013 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 is comprised of members who are or have been owners, operators, or officers of businesses operating throughout the State to hear testimony concerning regulatory processes, interactions, and roles between businesses and government agencies. This report summarizes the Board's activities during the year 2013 including information presented to the Board, and its resulting recommendations. The section of public law that directs the Board's requirements and activities may be found in Appendix A.

During 2013 the Regulatory Fairness Board held three public listening sessions in Presque Isle, Farmington and Bangor. The board heard comments from businesses ranging from truck weights, moving the registration of commercial vehicles to local offices, access to markets for potato farmers, storm water regulations and unwieldy and untimely process for automobile titles. The board also received suggestions on the board's future activity to look deeper into issues of "regulatory efficiency" vs. "regulatory fairness." The board will be discussing these ideas as it develops its work plan for 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 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 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 hears public comment from Maine businesses concerning interactions between businesses and government agencies, specifically state regulations which seriously impact business. The Board also reviews the 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.

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 but in Maine, it requires being licensed by the board of Cosmetology. While the Department of Professional Licensure has no interest in regulating

this type of business, our current statutes make practicing hair braiding without a license a Class D crime. Deregulation of hair braiding would require a statutory change.

Liquor Licensing: Our current liquor laws do not recognize new business models, and as a result businesses have been asking for statutory changes that allow them to operate. These are done one at a time, and our current regulatory system is a patchwork of exemptions created for just one business. 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. It makes the liquor laws difficult to navigate and implement. A complete re-codification of the statute is long overdue to make the current exemptions more consistent and easier to navigate.

2013 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 hearings in Presque Isle, Farmington and Bangor in 2013 and one organizational meeting in Augusta. 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 webpage, and attached in Appendix C.

This year the board heard concerns over truck weights and enforcement and access to markets for small farmers – especially in Aroostook where transportation is an issue. There was also an interest in being able to register commercial vehicles at the local Bureau of Motor Vehicle office, rather than through the main office in Augusta. The board also discussed the problem of access to capital for small business, and the January 2014 meeting will include 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. Other issues brought forward included the IT systems at the state, title processing and storm water regulations.

Activity of the Small Business Advocate January 2013 –December 2013

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 Presque Isle, Farmington and Bangor, as well as a conference call for Board members to provide input into the annual report. The Annual Report

was submitted to the Labor, Commerce and Economic Development Committee on February 1, 2013.

The Small Business Advocate testified or monitored at least eight bills this past legislative session. Successes include changes to the Workers Compensation statute to recognize equine activities under the agricultural exemption, and multiple bills dealing with the state's liquor laws. Much of this legislative activity came from businesses who called the office with hardships caused by regulatory statutes.

The Small Business Advocate also assisted with the development of Digital Rules and worked with the Office of Investigation on the legislative report for developing a regulatory process for scrap metal dealers.

A sampling of the case work:

Maine Revenue Services.

Eight businesses called after receiving closure notices from MRS as a result of non-payment of sales taxes. The SBA contacted MRS who worked out payment plans with all businesses, allowing them to remain open.

One business called to request a renewal of its resale certificate, even though its retail activity fell way below the statutory requirement of \$3,000. A call to MRS indicated that the reason the legislature had settled on that level of retail activity was to insure the business with a resale certificate (allowing them not to pay sales tax) was actually a legitimate business. The amount was lowered in 2005 from \$10,000 to \$3,000. The sales tax paid by businesses with less than \$3000 of business activity is refundable when it files its sales tax. The business will look at their receipts again to see if it met the required level of sales.

Professional and Finance Regulations (occupational licenses).

A hair salon was shut down after not renewing its license for over a year. There is a statutory process for reinstatement that can take up to a month to finalize. SBA was able to facilitate speeding that process up to two days, allowing the business to remain open and keep its customer base.

A retired forester who lost his license requested another review of his case and suggested repeal of the licensure boards' rules requiring a contract between the customer and licensee as it was "bad for business." This office declined to issue a finding in this case. The same request was also made in 2012, and was also denied by this office.

A small manufacturer was told by his insurance agent that it needed to limit employee hours in order to cover those employees for health insurance. SBA provided the business with information on Maine insurance law. The manufacturer, based on that information, is looking

for a new insurance vendor that has more accurate information to provide coverage for his employees.

The Small Business Advocate also met with CEI's Smart Start Program in Portland on regulatory issues that are impediments to the immigrant business community. Two specific issues were identified, the requirement for licensure for hair braiding and fire code requirements for a two hour firewall for child care settings.

Regulatory Reform opportunity:

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.

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 but in Maine, it requires being licensed by the board of Cosmetology. While the Department of Professional Licensure has no interest in regulating this type of business, our current statutes make practicing hair braiding without a license a Class D crime.

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

DHHS Health Inspection Program (HIP).

Business contacted SBA regarding a delay in license and inspection in mid –June. The business had hoped to open on Memorial Day, but was concerned the HIP can take up to a month to approve a license request. The SBA called HIP, to discover the business had submitted its license application that day. SBA worked with the plumbing program and drinking water program to expedite the licensing process. The licensure process hit a snag when it was discovered the only septic system on the premises was more than 60 years old and also serviced four mobile homes. When the landowner refused to put a new system in, the plumbing program offered several alternative arrangements for the business. At this point, the business has not pursued licensure.

Secretary of State.

A farm requested to get out of an International Fuel Tax Audit, or at the least not have the entire farm fuel use audited. The process the farmer uses to “guesstimate” his actual mileage (the odometer on the truck is broken) is what has triggered the audit. Unfortunately, the audit process is part of a 58 state and provincial agreement, and cannot not be minimized. The farmer requested an extension to be able to compile the required information after the harvest season is over.

Driver’s education school believed legislation recently passed required BMV to take back all the filing of applications and testing for students taking Driver’s Ed courses. SBA researched the language presented and adopted, testimony, including from the driver’s education association, spoke with the bill sponsor and the committee analyst. None of the research supports the driver education’s school interpretation of the new statute. Rep. Peoples submitted new legislation (LD 1611) to make the changes the driver education schools have requested.

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

Fire Marshall.

Two businesses requested waivers on the requirement of sprinkler installation. By way of background, the Fire Marshall’s office has had the authority to adopt the National Life Safety Code since 1959. When there are changes to the code, the office follows the APA to adopt the new code. In 2006, after the Station House Fire in Rhode Island, the National Life Safety Code (NLSC) was updated to include new requirements for bars with a capacity of more than 100 to install sprinkler systems. Maine gave businesses five years to comply with the law, and all but about 20 businesses are now in compliance. The SBA had several conversations with the Fire Marshall’s office about these businesses and how they could comply with the NLSC. As a result, the SBA suggested one business add a dedicated space for darts, which would drop the seating capacity below 100, thus negating the need for a sprinkler system. The second business just wanted an exemption, as its business model requires a capacity of well over 100.

Secretary Dunlap and the SBA met with the Governor’s office (Mike Cianchette) in April to request such an exemption for both businesses, and the Governor’s office declined to provide an exemption from the National Life Safety Code for these two businesses. I suggested the owner of the second business (a bottle club) contact his state representative or senator to see if emergency legislation could be put in to provide the exemption in statute, since it was the only recourse left. The business did contact his state representative in late June, and the SBA provided background information on the issue to the State Representative, as well as suggestions on where the business might be able to find financing to install a system.

A new indoor soccer facility was facing major design and construction costs as a result of the Fire Marshall’s decision the building capacity was 9,000 not the 1,000 the developers envisioned for the building. The Fire Marshall was requiring the design to include 75 feet of doors to serve as egress, which made the project financially unfeasible. The SBA worked with the Fire

Marshall to reduce their expected capacity based on the agreement with the town planning board that the facility would hold no more than 1,000, and the limitation on parking and bathroom facilities. The Fire Marshall agreed to use a smaller more manageable number, and the project was able to proceed.

A B&B owner was unhappy with the estimates he had gotten to install a sprinkler system in the facility. He anticipated the cost to be about half of what the estimates he received. He requested additional options to meet the National Life Safety Code. The SBA spoke with the Fire Marshall and presented the owner with additional options including an egress from each of the rooms to the ground. The owner felt these changes would negatively impact the look of the building. The Fire Marshall was willing to let the business open and run this season, as long as the business had a signed contract for the work to be done at the end of the season. In the end, the owner decided to wait a year before they opened the B&B. The Fire Marshall met with the owner three times, and was willing to go down and talk options again. The regulation of sprinkler systems in B&B's has been in place since 1992.

Liquor enforcement.

In addition to the businesses that required statutory changes (see Legislation):

A business was seeking information on alternative business structures to open a small winery. The SBA connected them with liquor enforcement and held several conference calls so the new business could figure out what configuration of activities the business could do under current state statute.

Regulatory Reform opportunity:

Our current liquor laws do not recognize new business models, and as a result businesses have been asking for statutory changes allowing them to operate. These are done one at a time, and our current regulatory system is a patchwork of exemptions created for just one business. 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. It makes the liquor laws difficult to navigate and implement. A complete re-codification of the statute is long overdue to make the current exemptions more consistent and easier to navigate.

Legislation:

Businesses who contacted the SBA requested their legislators to submit legislation to change statutes, addressing statutory barriers:

LD 1121 (PL 2013 chapter 259) An Act To Promote the Production of Maine Beverages (Rep. Brian Jones) extended the current exemption from the bottle law for small breweries to include small manufacturers of other beverages.

LD 696 (PL 2013 chapter 111) An Act To Include Raising Equines in the Definition of Agriculture for the Purpose of the Maine Workers' Compensation Act of 1992 (Sen. Savillo)

Workers compensation did not recognize horse farms as an agriculture activity. The requirement that stables and other equine facilities carry workers comp for their employees would have cost most businesses between \$8-12,000 a year. The LD included equine activities as a part of the agricultural definition. This change positively impacts around 280 horse farms across the state.

LD 24 – An Act To Reduce the Number of Labels of Wine a Retailer Must Stock To Conduct a Wine Tasting (Sen. Haskell) A small specialty shop, who first contacted the SBA, requested the number of labels required to host a wine tasting be dropped from 125 to 47. The bill died in non-concurrence.

LD 1518 (PL 2013 Chap. 344) An Act Concerning Liquor Licensing Laws for Holders of 2 Licenses (Sen., Goodall) Dual Liquor License – 2 off-premise licensees also wanted to get an on-premise license. The law requires complete separation between the two licensed facility, which was completely unworkable (and unnecessary) for these, and several other, businesses. There are at least 2 additional businesses that are interested in expanding their operations with this statute change.

LD 1082 An Act Concerning the Ability of Off-premises Liquor Licensees To Dispense Liquor in Sealed Refillable Containers (Sen. Gratwick) A specialty shop wanted to repackage beer from a growler for resale to the public. The committee majority voted Ought Not to Pass.

LD 1548 (PL 2013 Chap 345) An Act To Support Maine Businesses by Authorizing Certain Brewing Partnerships (Sen. Alfond) Peak's Brewing - SBA met with the Senate President, AG, Director of Liquor Enforcement, Peak's Brewing, Shipyard and Dan Riley to discuss Peak's need for an "alternating manufacturing" process. Peak's had the federal approval, but state law did not recognize the alternating manufacturing process. Sen. Alfond submitted legislation to change statute. However, the statute was only changed for breweries, so wineries or distilleries will also need to have the statute amended if they are going to take advantage of this new business model.

LD 788 An Act To Provide Vehicle Owners and Repair Facilities Access to Vehicle Diagnostic and Repair Information and Equipment (Rep. Ayotte) –The "Right to Repair" legislation would require automakers to sell the same repair and diagnostic information and tools to independent repair shops, consumers and franchised dealerships. SBA testified on the potential future impact of small car repair shops, specifically in rural Maine where there are few authorized dealers, if the law is not passed. The bill was carried over.

LD 890 An Act To Buy American-made Products (Sen. Jackson) SBA testified, using specific examples of how Maine State Government has used its purchasing power to build markets for Maine Made products. Bill vetoed by the Governor.

Other:

A new restaurant seeking to open in a historic building was having difficulties with the building structure and the landlord's perceived lack of response. The landlord was a local economic development organization. The building had been restored with federal grants from EDA and RD, but there were on-going problems with the building envelop, as well as the HVAC system installation and reimbursement for the bathroom installation. SBA spoke with the federal agencies, as well as historic preservation, about the business's issues.

Presentations and meetings:

Winthrop Area Chamber of Commerce, Kennebec Leadership Institute, Box Radio interview, Hancock County Business Support meetings, Maine Development Foundation, Maine Metal Products Director, Mobilize Maine, Maine Center for Enterprise Development, Maine International Trade Center, Start-up Portland, Maine's Small Business Coalition, Maine Marine Composites Association, Maine Marine Trade's Executive Director, Brunswick Landing, Women Work and Community, Finance Authority of Maine, Coalition for Affordable Health Care, CEI on barriers to New Americans, presentations of implementation of the ACA in Augusta and Presque Isle, WBDC monthly networking meetings, Bangor Chamber of Commerce Hot Stove League, Maine Sea Grant presentation on new opportunities for Maine's aquaculture businesses, Meet the Lender sessions with the United States Small Business Administration and the Internal Revenue Service.

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

Appendix F: 2012 Regulatory Fairness Board Members

Secretary of State Matthew Dunlap – *Chairman*

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148 State House Station
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Appointed by Governor Paul R. LePage:

Ms. Patricia Kuhl

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

Hon. Douglas Smith (Retired)

P. O. Box 460
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Appointed by Senate President Justin Alford:

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Appointed by House Speaker Mark Eves:

Vacant

2013 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

Appendix C

Regulatory Fairness Board Meeting 5/10/13

University of Maine at Presque Isle, Alumni Room

Attending for the Regulatory Fairness Board: Pat Kuhn, Doug Smith, Matt Dunlap, Peggy Schaffer

Public attendees: Barbara Hayslett (Congressman Michaud's office) , Alan Perry Farm Technologies Network, Presque Isle, Loretta Adamson and Shelly Mountain (she and her husband own a logging truck) Theresa Fowler, Central Aroostook Chamber of Commerce, Bob Dorsey, Aroostook Partnership for Progress.

Secretary Dunlap provided an overview of the role of the Secretary of State, Regulatory Fairness Board and Small Business Advocate : to provide a forum for people in business to navigate their way through the regulatory process and to hear what business people are dealing with in the real world. Legislative action often causes unanticipated consequences. The purpose of the Regulatory Fairness Board is to listen to the business community and to hear what is really happening on the ground.

Public Comment:

Shelly Mountain – Owns a logging truck and has issues with over-load enforcement. The trucking rates make it hard to make a living with a legal weight load. Truckers need to carry the extra weight to make any money. Being fined for carrying above the legal weight load becomes one of the costs of doing business. Requirements for the IFTA form now also call for maintaining separate log books for wood roads vs. paved roads, increasing the paperwork burden. Ms. Mountain also inquired as to whether the registration of trucks can be done locally without sending registration and international fuel tax to Augusta.

Secretary Dunlap – Registration system for trucks (IRP and IFTA) are all very complicated and dictated largely by federal regulations. Processing those applications locally would actually take more time and be much less efficient.

Alan Perry noted potato farms face the same issue with overweight loads. Perry pointed out that natural resource based industries do not have the luxury of passing on their costs, especially the closer to the raw product you get. The result is that often all the costs with complying with regulations (and costs for not complying) are born by those that are closest to the resource (the producer)

Secretary Dunlap: Increasing truck weight limits comes in front of the legislature every session, and it is always defeated. Safety issues, and damage to the state roads are usually the key reasons increasing truck weights on back roads has never happened, despite the strong interest of some of the business community to raise them. This year Senator Jackson successfully

sponsored legislation to raise the limits on a very short piece of road to get access from the woods to a mill. But that is an isolated specific exception.

Question to the Regulatory Fairness Board: How are you able to get the information needed from industry to make changes?

Doug Smith: RFB would like to hear the most important regulatory concerns about how the state is conducting its regulatory responsibilities. This has proven not to be an easy task. There is a possibility for this board to take on some of those most important issues to present to the Governor and the Legislature. Not all regulatory issues are going to get satisfactorily handled – but it is important for the business community to get this information to the RFB so the board can act as a conduit to address specific issues.

Secretary Dunlap noted the board has no authority to waive statutes. The RFB is an effort to address what often ends up as a disjointed regulatory process. Sometimes laws have unintended consequences, that are not understood or reflected in the intent of the legislature when they passed them. Part of the role of this board is to listen to those unintended consequences and make recommendations for changes.

Alan Perry and Shelly Mountain noted that the perspective of small farmers and small businesses is that big companies get away with violating the regulatory structure because money buys the ability to influence. Big business has the ability to lobby and put pressure on agencies that lessens the impact of regulation on their business. Small business – especially natural resource based industries do not have that same ability.

Alan Perry spoke about the difficulties in retaining natural resource based small businesses. Many of the issues are not purely regulatory – including access to markets, adopting new methods and technologies. Natural resource businesses – especially small ones - end up being price takers because they have very limited access to markets and the costs to move goods to far away markets is often prohibitive.

Doug Smith: Very interested in the agricultural piece of the impact of the combination of the regulatory issues.

Secretary Dunlap: There is a problem bringing agricultural produce to market. The trip from Aroostook to Boston requires at least one layover, then the trucks often return empty, with no “back haul” available coming this far north, making the trip twice as expensive. How do we make a connection between loads? Would there be any utility of a distribution hub – where farmers could bring their produce to a central distribution point? Cabot has a successful cooperative model using multiple farmers to bring together enough raw product to make cheese, and then distribute it to larger markets.

The question of who pays for the hub was raised. Alan Perry noted that it can't be the grower. Secretary Dunlap's suggestion is the state does it as to give local farmers better access to larger markets.

Attendees also questioned what would get new people into the agricultural business? Given the perceived and real cost barriers of access to markets, the substantial capital investments, the significant time commitment of labor, and regulations?

Doug Smith: Every regulatory issue has some rational basis. The issue is that in total they cost money to the farmer or business person. That increased regulatory cost increases the risk, making capital investments in the natural resource based industries not viable. At the same time, it is very difficult come up with constructive regulatory solutions that do not impair public safety, environment, worker safety etc. Industry must take the lead to help frame this up for the legislature so legislators will understand the overall impact.

Theresa Fowler, executive director, Central Aroostook Chamber of Commerce. Theresa offered to take on the effort to contact the major farmers. She believes all have a laundry list of regulations that are costly.

Alan Perry - Suggested putting out a survey on what might be the regulatory issues – and identify which growers to bring to the table. Smaller farmers are not going to be happy if the big growers are the only ones who are asked. The small growers think the biggest growers are just fine.

Doug Smith: The Board would like to accept Theresa's offer about pulling together a survey or something to bring more of a focus and a follow –up meeting with farmers. Theresa and Alan offer to hone the issues and bring the big issues with possible solutions to a future meeting of the RFB in Aroostook. The agenda would be driven by the industry to come up with recommendations that are substantive.

Bob Dorsey – Aroostook Partners for Progress works with Mobilize Northern Maine which is an asset based economic development structure. They have formed a diversified group looking at agriculture and forestry's growth potential. One of the things the group is looking at is barriers to competition – both from Canada and from other states. Regulations are part of that process. When the group identifies them, they would like to be able to come to the Regulatory Fairness Board with the results. Canadians do not have the same barriers on exports, workforce training, healthcare. Maine often seems like its fighting itself. New administrations and legislators have different priorities and policies from the previous administrations and legislatures. Aroostook has been working to attract investment in wind power for the past seven years. Now the state policies have changed, making very difficult to continue to attract those investments.

Final outcome:

Theresa Fowler and Alan Perry will work together to identify key regulatory issues of farmers and possible solutions and will work to schedule another meeting with the RFB when farmers can attend. The meeting has been scheduled for July 26, 9:00 a.m. at the Alumni Room, University of Maine at Presque Isle. (This meeting was cancelled)

Other Business:

Two board members have resigned because of inability to attend meetings. The RFB agreed to pull together a few names to offer to appointing authority (Senate President and Speaker). Requests have been made to the Speaker and the President for new appointees.

Regulatory Fairness Board October 9th 2013 University of Maine at Farmington, 4:00 – 6:00 p.m.

Attending:

Matt Dunlap, Chair

Doug Smith, member

Pat Kuhl, member

Peggy Schaffer, Small Business Advocate

Debbey French, Tech Support Sec. of State's Office

Paul and Jean Gilbert, Jay (Rep. Gilbert, House District 87)

Sun Journal Newspaper

The meeting was broadcast over Go To Meeting. One person attended on –line.

Secretary Dunlap opened the meeting with introductions at 4:00. David Brenerman of Portland has been appointed by the Senate President to replace Michael Cote, who resigned earlier in the year. David was unable to attend this meeting. The Chair requested Small Business Advocate give update on work of the office.

Small Business Advocate gave a brief report on activities of the office, and talked about the potential of the board to look into some of the barriers presented by professional licensure, especially to new comers to Maine. The immigrant and refugee community settling in many parts of Maine often come with existing professional skills, but find it difficult to navigate around some of Maine's professional licensure structures. The advocate asked the board if this was an issue they wanted further information on. The board was curious as to whether the issues were structural (in the aggregate) or were just on an individual basis. The SBA pointed to the issue of hair braiding. Currently Maine's law requires a cosmetology license, needing 1500 hours of internship or going to cosmetology school to be able to practice simple hair braiding. This has been a significant barrier to refugees starting what is typically a small business in the countries and regions they came from. Maine's Department of Professional and Financial Regulation has no interest in licensing the practice, but the law current prevents these new Americans from starting small businesses with this traditional practice. The board, at this time, had no interest in pursuing this because it would require statutory changes in the 2nd regular session, which is reserved for emergencies only.

The Advocate suggested to improve attendance at RFB meetings the board work with the Bangor Chamber for the next meeting to piggy back on an activity that small businesses were already attending. The Board agreed, and the advocate will work with the Bangor Chamber of Commerce to set up meeting before the end of the year.

The board discussed a critical issue for small business – access to capital. Pat K noted lack of access to capital was one of the key issues many small business fail to thrive. Doug Smith noted

many large corporations have significant cash holdings, but none of those funds are flowing into Maine businesses – large or small. He believes Maine's regulatory structure discourages those large corporate investments into Maine. It was suggested the board look into what regulatory structures present barriers to small and large businesses, and determine if there is a role for the board in helping address some of those regulatory barriers to improve access to capital. At the January meeting, the Small Business Advocate will invite FAME and SBA to come and talk about the issues those organizations see as barriers for small businesses.

The meeting was adjourned at 6:00.

**Regulatory Fairness Board joint meeting with Bangor Region Chamber of Commerce
Saturday December 7th, EMCC, Bangor.**

Members: Doug Smith, David Brenerman. Secretary of State Matt Dunlap and member Pat Kuhl were unable to attend the meeting.

Staff: Peggy Schaffer

The Regulatory Fairness Board joined the Bangor Region Chamber of Commerce for its "Hot Stove League" with area businesses and legislators. The bulk of the meeting was the presentation of its "Issues of Impact" to area legislators and business leaders. The Issues of Impact focuses on nine areas of recommendations that the Bangor Region Chamber considers to be a high priority to move the Bangor area's economy forward.

The group discussed health care, including the importance of expanding Medicare, especially for businesses that pay wages under \$10.00. These companies have to restrict the hours for some employees to fewer than 30 hours a week in order not to have to provide company sponsored health care. Most of the employees would qualify under the expanded Medicare program, allowing the businesses to employ them full time.

The importance of expanding natural gas to more areas and more business was a key topic on energy. This included a discussion of the new pact between the New England states to cooperate on the expansion of a natural gas pipeline to expand capacity and availability of natural gas in Maine. Other conversations included the importance of a truly statewide energy and building code, which would provide consistency between communities and a standard for energy efficiency in new buildings.

The group undertook a wide ranging discussion on the tax reform, and the importance of a stable tax environment. The Bangor Region Chamber has long been a supporter of broadening the base of the tax system to include more services and to use that new revenue to lower the income tax. They also spoke about the importance of continuing the work of regionalization of services, perhaps with more services being provided by the counties, while acknowledging the difficulties of regionalization of certain services, including fire protection.

At 9:30, the panel turned the discussion over to the Regulatory Fairness Board. Peggy provided a brief overview of the RFB, which is modeled on the SBA Regulatory Fairness Board. Doug Smith expressed his frustration with the lack of progress the board has been able to undertake

addressing issues of unfair regulations because of the lack of input from the business community. He noted in order for the board to really do the work the legislature intended it is important the business community bring forward issues about regulation.

Jack Quirk commented on the fact government cannot seem to do IT correctly, mentioning the Bureau of Motor Vehicle, and the issue of titles and the associated paper work (Notice of Sales) being all paper. Others discussed the issue the State's web page was not that business friendly, or easy to find or search for things.

Other suggestions included a more seamless IT systems at the state level, so department can share data and data bases that can "talk" to each other and a continued push towards more electronic records and filings.

Another member suggested the board may have a branding problem. He noted that "regulatory fairness" may not be the issue with many businesses, and perhaps "regulatory efficiency" would be a better name. Businesses don't necessarily feel they have been treated "unfairly" by regulatory agencies, but rather the regulatory structure is not efficient, especially when it comes to the interplay between federal, state and local regulations. A discussion of storm water regulations ensued, including the problems in Bangor of wanting the water that feeds into the Penobscot from the Bangor bog and other tributaries to be "Class B" water. Class B is essentially a cold water habitat designation, and bogs are a natural warm water habitat. Requiring businesses that border that bog, and have large impervious surfaces, to bring those tributaries up to a Class B standard is unnecessarily expensive, and does not recognize the natural state of that water.

The other example used was telecom regulation requiring a "provider of last resort" with a land line. This requires the telephone company to run and maintain expensive land lines, when perhaps new technology and cell towers would provide the same service for a cheaper cost. The suggestion was for the board to focus its efforts on system wide efficiencies and effectiveness rather than focusing on regulations that impact one business at a time. Providing a broader look at larger policy issues may be much more effective than addressing regulatory issues of individual businesses.

Doug Smith and David Brenerman both suggested the board discuss these ideas and possible activities at the January meeting. The meeting will also include a review of the annual report to the legislature. The board has also expressed an interest in talking with loan officers and others about the issues around access to capital for small business at that meeting. Staff will circulate possible dates in January for a meeting.