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Date: (Filing No. S-)

JOINT SELECT COMMITTEE ON REGULATORY FAIRNESS AND REFORM

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 10, L.D. 1, Bill, “An Act To Ensure Regulatory Fairness and Reform”

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

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, during the First Regular Session of the 125th Legislature, the Joint Select Committee on Regulatory Fairness and Reform held 7 public meetings throughout the State and received hundreds of recommendations for regulatory reform from the public, the regulated business community, environmental advocacy groups and other stakeholders; and

Whereas, through 2 subsequent public hearings and numerous work sessions on those recommendations, the committee reached unanimous agreement on the provisions in this Act to implement a number of significant and critical regulatory reforms; and

Whereas, these reforms must take effect immediately to ensure regulatory fairness, improve the business climate of the State, encourage job creation and retention and expand opportunities for Maine people; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 38 MRSA c. 2, sub-c. 1-A is enacted to read:

COMMITTEE AMENDMENT

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SUBCHAPTER 1-A

ENVIRONMENTAL AUDIT PROGRAM

§349-L. Scope of program

This subchapter is intended to enhance the protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of state and federal environmental requirements. An environmental audit program and a compliance management system developed under this subchapter may be part of a regulated entity's comprehensive environmental management system.

§349-M. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Compliance management system. "Compliance management system" means a system implemented by a regulated entity appropriate to the size and nature of its activities to prevent, detect and correct violations of environmental requirements through all of the following:

A. Compliance policies, standards and procedures that identify how employees and agents of the regulated entity are to meet environmental requirements and the conditions of permits, enforceable agreements and other sources of authority for environmental requirements;

B. Assignment of overall responsibility within a regulated entity for overseeing compliance with policies, standards and procedures and assignment of specific responsibility for ensuring compliance at each facility or operation of the regulated entity;

C. Mechanisms for systematically ensuring that compliance policies, standards and procedures of the regulated entity are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system and a means for employees or agents of the regulated entity to report violations of environmental requirements without fear of retaliation;

D. Procedures to communicate effectively the regulated entity's standards and procedures to all employees and agents of the regulated entity;

E. Appropriate incentives to managers and employees of the regulated entity to perform in accordance with the compliance policies, standards and procedures of the regulated entity, including consistent enforcement through appropriate disciplinary mechanisms; and

F. Procedures for the prompt and appropriate correction of any violations and any necessary modifications to the regulated entity's compliance management system to prevent future violations.

1 **2. Environmental audit program.** "Environmental audit program" means a
2 systematic, documented, periodic and objective review by a regulated entity of facility
3 operations and practices that are related to meeting environmental requirements.

4 **3. Environmental audit report.** "Environmental audit report" means the
5 documented analysis, conclusions and recommendations resulting from an environmental
6 audit program, but does not include data obtained in, or testimonial evidence concerning,
7 the environmental audit.

8 **4. Environmental requirement.** "Environmental requirement" means any law or
9 rule administered by the department.

10 **5. Gravity-based penalty.** "Gravity-based penalty" means the punitive portion of a
11 penalty for a violation of an environmental requirement that exceeds the economic gain
12 from noncompliance with the requirement; and

13 **6. Regulated entity.** "Regulated entity" means an entity subject to environmental
14 requirements.

15 **§349-N. Incentives**

16 Subject to section 349-Q, and notwithstanding any other provision of law relating to
17 penalties, the department may adjust or mitigate penalties for violations of environmental
18 requirements in accordance with this section.

19 **1. No gravity-based penalties.** If the department determines that a regulated entity
20 satisfies all of the conditions of section 349-O, the department may not impose in any
21 administrative proceeding or seek in any civil action any gravity-based penalty for a
22 violation that is discovered and disclosed by the regulated entity.

23 **2. Reduction of gravity-based penalties by 75%.** If the department determines that
24 the regulated entity satisfies the conditions of section 349-O, subsections 2 to 9, the
25 department shall reduce by 75% gravity-based penalties that would otherwise be
26 associated with violations discovered and disclosed by the regulated entity.

27 **3. No recommendation for criminal prosecution.** If the department determines
28 that the regulated entity satisfies the conditions of section 349-O, subsections 2 to 9, the
29 department may not recommend that criminal charges be brought against the regulated
30 entity if the department determines that the violation is not part of a pattern or practice
31 that demonstrates or involves:

32 A. A prevalent management philosophy or practice that conceals or condones
33 environmental violations; or

34 B. High-level corporate officials' or managers' conscious involvement in, or willful
35 blindness to, violations of state or federal environmental laws.

36 Whether or not the department recommends the regulated entity for criminal prosecution
37 under this section, the department may recommend for prosecution the criminal acts of
38 individual managers or employees under existing policies guiding the exercise of
39 enforcement discretion.

40 **4. No routine request for environmental audit reports.** The department may not
41 request an environmental audit report in connection with a routine inspection of a

1 regulated entity. If the department has reason to believe that a violation by a regulated
2 entity of an environmental requirement has occurred, the department may seek any
3 information relevant to identifying violations or determining liability or the extent of
4 harm resulting from the violation.

5 **§349-O. Conditions of discovery**

6 The incentives established in section 349-N apply to a violation of an environmental
7 requirement only if:

8 **1. Systematic discovery.** The violation was discovered through:

9 A. An environmental audit program; or

10 B. A compliance management system that demonstrates the regulated entity's due
11 diligence in preventing, detecting and correcting violations. The regulated entity
12 shall notify the department when it has a compliance management system in place
13 and shall make available to the department upon request a copy of the system
14 components. The regulated entity shall provide accurate and complete documentation
15 to the department describing how its compliance management system meets the
16 criteria specified in section 349-M, subsection 1 and how the regulated entity
17 discovered the violation through its compliance management system. The department
18 may require the regulated entity to make publicly available a description of its
19 compliance management system;

20 **2. Voluntary discovery.** The violation was discovered by the regulated entity.
21 Incentives under section 349-N do not apply to violations discovered through a legally
22 mandated monitoring or sampling requirement prescribed by statute, regulation, permit,
23 judicial or administrative order or consent agreement, including:

24 A. Emissions violations detected through a continuous emissions monitor or an
25 alternative monitor established in a permit where any such monitoring is required;

26 B. Violations of National Pollutant Discharge Elimination System discharge limits
27 established under the federal Clean Water Act, 33 United States Code, Section 1342
28 (2010) detected through required sampling or monitoring;

29 C. Violations discovered through a compliance audit required to be performed by the
30 terms of a consent order or settlement agreement, unless the audit is a component of
31 agreement terms to implement a comprehensive environmental management system;
32 and

33 D. Violations discovered by a department inspection;

34 **3. Prompt disclosure.** The regulated entity fully discloses the specific violation in
35 writing to the department within 21 days after the entity discovered that the violation has,
36 or may have, occurred, unless the amount of time to report the violation is otherwise
37 prescribed in statute, rule or order. The time at which the regulated entity discovers that a
38 violation has, or may have, occurred begins when a person authorized to speak on behalf
39 of the regulated entity has an objectively reasonable basis for believing that a violation
40 has, or may have, occurred. Persons authorized to speak on behalf of the regulated entity
41 must be listed in the management audit by position title. The department's response to a

1 violation disclosed by a regulated entity under this subsection must be made in writing to
2 the regulated entity within 3 months of the disclosure of the violation by the entity;

3 **4. Discovery and disclosure independent of government or 3rd-party plaintiff.**

4 The regulated entity discovers and discloses to the department the potential violation
5 prior to:

6 A. The commencement of an inspection or investigation related to the violation. If
7 the department determines that the regulated entity did not know that it was under
8 investigation and the department determines that the entity is otherwise acting in
9 good faith, the department may determine that the requirements of this paragraph are
10 met;

11 B. The regulated entity's receipt of notice that it is the subject of a lawsuit;

12 C. The filing of a complaint by a 3rd party;

13 D. The reporting of the violation to the department or other state agency by an
14 employee other than the person authorized to speak on behalf of the regulated entity
15 under subsection 3; or

16 E. The imminent disclosure of the violation by a regulatory agency.

17 For regulated entities that own or operate multiple facilities, the fact that one facility is
18 the subject of an investigation, inspection, information request or 3rd-party complaint
19 does not preclude the department from exercising its discretion to apply the regulated
20 entity's compliance management system to other facilities owned or operated by that
21 regulated entity;

22 **5. Correction and remediation.** The regulated entity corrects the violation within
23 60 days from the date of discovery, unless the amount of time to correct is otherwise
24 prescribed in statute, rule or order, certifies in writing to the department that the violation
25 has been corrected and takes appropriate measures as determined by the department to
26 remedy any environmental or human harm due to the violation. The department retains
27 the authority to order an entity to correct a violation within a specific time period shorter
28 than 60 days whenever correction in a shorter period of time is feasible and necessary to
29 protect public health and the environment adequately. If more than 60 days will be
30 needed to correct the violation, the regulated entity shall so notify the department in
31 writing before the 60-day period has passed. To satisfy conditions of this subsection and
32 subsection 6, the department may require a regulated entity to enter into a publicly
33 available written agreement, administrative consent order or judicial consent decree as a
34 condition of obtaining relief under this subchapter, particularly when compliance or
35 remedial measures are complex or a lengthy schedule for attaining and maintaining
36 compliance or remediating harm is required;

37 **6. Prevent recurrence.** The regulated entity agrees in writing to take steps to
38 prevent a recurrence of the violation, which may include improvements to its
39 environmental audit program or compliance management system;

40 **7. No repeat violations.** The specific violation, or a closely related violation, has
41 not occurred within the past 3 years at the same facility and has not occurred within the
42 past 5 years as part of a pattern at multiple facilities owned or operated by the same
43 regulated entity. For the purposes of this subsection, a violation or closely related

1 violation is any violation previously identified in a judicial or administrative order, a
2 consent agreement or order, a complaint, letter of warning or notice of violation, a
3 conviction or plea agreement or any act or omission for which the regulated entity has
4 previously received penalty mitigation from the United States Environmental Protection
5 Agency or the department;

6 **8. Other violations excluded.** The violation did not result in serious actual harm, or
7 present an imminent and substantial endangerment, to human health or the environment,
8 did not violate the specific terms of any judicial or administrative order or consent
9 agreement or was not a knowing, intentional or reckless violation; and

10 **9. Cooperation.** The regulated entity cooperates as requested by the department and
11 provides such information requested by the department to determine the applicability of
12 this subchapter.

13 **§349-P. Economic benefit**

14 **1. Department discretion.** In order to ensure that regulated entities that violate
15 environmental requirements do not gain an economic advantage over regulated entities
16 that comply with environmental requirements, this subchapter may not be construed to
17 limit the discretion of the department to recover any economic benefit gained as a result
18 of noncompliance by a regulated entity.

19 **2. Waiver; insignificant economic benefit.** The department may waive the entire
20 penalty, including any penalty for economic benefit gained as a result of noncompliance,
21 for a regulated entity that meets all the requirements of section 349-O when, in the
22 department's opinion, the violation does not merit any penalty due to the insignificant
23 amount of any economic benefit.

24 **§349-Q. Application**

25 This subchapter does not limit any authority of the department to adjust or otherwise
26 mitigate any penalty imposed or sought by the department for a violation when the
27 regulated entity responsible for the violation does not receive an incentive under this
28 subchapter for the same violation.

29 **§349-R. Rules**

30 The board may adopt rules to implement the regulation of environmental audit
31 programs established in this subchapter. Rules adopted under this section are major
32 substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

33 **PART B**

34 **Sec. B-1. 5 MRSA §8063-A** is enacted to read:

35 **§8063-A. Analysis of benefits and costs**

36 In addition to the economic impact statement required under section 8052, subsection
37 5-A and the fiscal impact note required under section 8063, an agency may, within
38 existing budgeted resources and in instances in which the consideration of costs is
39 permitted, conduct an analysis of the benefits and costs of a proposed rule to evaluate the

1 effects of the rule on the distribution of benefits and costs for specific groups and on the
2 overall economic welfare of the State.

3 **1. Contents of a cost-benefit analysis.** To the extent permitted within existing
4 resources, a cost-benefit analysis conducted under this section must include, at a
5 minimum, the following information:

6 A. Specification of the baseline condition for the analysis, including all required
7 parameters for the analysis, all assumptions made in specifying the baseline condition
8 and specification of the analysis period;

9 B. A description of the methods used to discount future benefits and costs, preferably
10 based on the federal Office of Management and Budget's discount rate for federal
11 projects;

12 C. An analysis of changes in the level of economic activity in the State as measured
13 by employment, income and outputs; and

14 D. An estimate of the discounted benefits and costs of the proposed rule over the
15 baseline condition, including benefits and costs to specific groups and changes in the
16 economic welfare of the State as a whole over the baseline condition.

17 Prior to conducting a cost-benefit analysis under this section, an agency shall
18 determine that sufficient staff expertise and budgeted resources exist within the agency to
19 complete the analysis. The agency shall include a cost-benefit analysis with a copy of a
20 proposed rule when responding to a request for the proposed rule under section 8053,
21 subsection 3-A. When the analysis is conducted on a provisionally adopted major
22 substantive rule, the analysis must be included with the materials submitted to the
23 Executive Director of the Legislative Council under section 8072, subsection 2. A
24 cost-benefit analysis conducted under this section is not subject to judicial review under
25 section 8058.

26 **PART C**

27 **Sec. C-1. 5 MRSA §13062, sub-§2, ¶B,** as enacted by PL 1987, c. 534, Pt. A,
28 §§17 and 19, is amended to read:

29 B. In accordance with section 13063, the office shall implement a business
30 ombudsman program to assist businesses by referring businesses and persons to the
31 proper agencies designed to provide the business services or assistance requested, and
32 to serve as a central clearing house of information with respect to business assistance
33 programs and services available in the State.

34 **Sec. C-2. 5 MRSA §13063,** as corrected by RR 1997, c. 2, §§17 and 18, is
35 amended to read:

36 **§13063. Business Ombudsman Program**

37 The director shall be responsible for the implementation of establish and implement
38 pursuant to this section the Business Assistance Referral and Facilitation Ombudsman
39 Program, referred to in this section as "the program," and the director shall serve as the
40 ombudsman for the program. The program is established to: resolve problems

1 encountered by businesses dealing with other state agencies; facilitate responsiveness of
2 State Government to small business needs; report to the commissioner and the Legislature
3 on breakdowns in the economic delivery system, including problems encountered by
4 businesses dealing with state agencies; assist businesses by referring businesses and
5 persons to resources that provide the business services or assistance requested; provide
6 comprehensive permit information and assistance; and serve as a central clearinghouse of
7 information with respect to business assistance programs and services available in the
8 State.

9 **1. Referral and central clearinghouse service.** The ~~director~~ ombudsman shall
10 maintain and update annually a list of the business assistance programs and services and
11 the names, locations, websites and telephone numbers of the organizations providing
12 these programs and services that are available within the State. The ~~director~~ ombudsman
13 may publish a guide consisting of the business assistance programs and services available
14 from public or private sector organizations throughout the State. This program ~~shall~~ must
15 be designed to:

- 16 A. Respond to written and oral requests for information about business services and
17 assistance programs available throughout the State;
- 18 B. Obtain and compile the most current and available information pertaining to
19 business assistance programs and services within the State;
- 20 C. Delineate the business assistance programs and services by type of program or
21 service and by agency; and
- 22 D. Maintain a list, to be updated annually, of marketing programs of state agencies
23 with a description of each program.

24 **2. Business fairness and responsiveness.** The ~~director~~ ombudsman shall implement
25 a business ~~facilitation~~ fairness and responsiveness service ~~which shall be~~ designed to:

- 26 A. Resolve problems encountered by ~~business persons~~ businesses with other state
27 agencies and with certified regional and local economic development organizations;
- 28 B. Coordinate programs and services for business among agencies and all levels of
29 government;
- 30 C. Facilitate responsiveness of State Government to ~~small~~ business needs; and
- 31 D. Report to the commissioner and the Legislature any breakdowns in the economic
32 delivery system, including problems encountered by businesses dealing with state
33 agencies.

34 **3. Comprehensive permit information.** The ~~director~~ ombudsman shall develop
35 and maintain a program to provide comprehensive information on permits required for
36 business undertakings, projects and activities and to make that information available to
37 any person. This program must function as follows.

- 38 A. ~~Not later than 90 days from April 6, 1992~~ By December 15, 2011, each state
39 agency required to review, approve or grant permits for business undertakings,
40 projects and activities shall report to the office in a form prescribed by the office on
41 each type of review, approval and permit administered by that state agency.
42 Application forms, applicable agency rules and the estimated time period necessary

1 for permit application consideration based on experience and statutory or regulatory
2 requirements must accompany each state agency report.

3 B. Each state agency required to review, approve or grant permits for business
4 undertakings, projects and activities, subsequent to its report pursuant to paragraph A,
5 shall provide to the office, for information purposes only, a report of any new permit
6 or modification of any existing permit together with applicable forms, rules and
7 information required under subsections 1 and 2 regarding the new or modified permit.
8 To ensure that the department's information is current, each agency shall report
9 immediately to the office when a new permit is adopted or any existing permit is
10 modified. "Permit," as used in this paragraph, refers to the categorical authorization
11 required for an activity. "Permit" does not mean a permit issued to a particular
12 individual or business.

13 C. The office shall prepare an information file on each state agency's permit
14 requirements upon receipt of that state agency's reports and shall develop methods for
15 that file's maintenance, revision, updating and ready access.

16 D. The office shall provide comprehensive permit information on the basis of the
17 information received under this subsection. The office may prepare and distribute
18 publications, guides and other materials explaining permit requirements affecting
19 business and including requirements involving multiple permits or multiple state
20 agencies that are based on the state agency reports and the information file for the
21 convenience of permit applicants.

22 **4. Permit assistance.** ~~Within 90 days of April 6, 1992~~ By December 15, 2011, the
23 ~~director~~ ombudsman shall set up procedures to assist permit applicants who have
24 encountered difficulties in obtaining timely and efficient permit review. These
25 procedures must include the following.

26 A. Any applicant for permits required for a business undertaking, project or activity
27 must be allowed to confer with the office to obtain assistance in the prompt and
28 efficient processing and review of applications.

29 B. The office shall, as far as possible, give assistance, and the ~~director~~ ombudsman
30 may designate an officer or employee of the office to act as an expeditor with the
31 purpose of:

32 (1) Facilitating contacts for the applicant with state agencies responsible for
33 processing and reviewing permit applications;

34 (2) Arranging conferences to clarify the interest and requirements of any state
35 agency with respect to permit applications;

36 (3) Considering with state agencies the feasibility of consolidating hearings and
37 data required of the applicant;

38 (4) Assisting the applicant in the resolution of outstanding issues identified by
39 state agencies, including delays experienced in permit review; and

40 (5) Coordinating federal, state and local permit review actions to the extent
41 practicable.

1 **5. Retail business permitting program.** By ~~July 1, 1994~~ February 1, 2012, the
2 ~~director~~ ombudsman shall establish and administer a central permitting program for all
3 permits required by retail businesses selling directly to the final consumer, ~~except permits~~
4 including, but not limited to, permits required for the operation of hotels and motels,
5 convenience stores and eating and lodging places, and permits required for the sale of
6 liquor or beer, tobacco, food, beverages, lottery tickets and gasoline. Permits issued by
7 the Department of Environmental Protection, the Department of Marine Resources and
8 the Maine Land Use Regulation Commission are not included in this program. ~~Agencies~~
9 ~~and permits referred to in subsections 5 to 7 do not include these excepted agencies or~~
10 ~~permits issued by them.~~ The ~~director~~ ombudsman shall:

11 A. Create a consolidated permit procedure that allows each business to check on a
12 cover sheet all state permits for which it is applying and to receive all permit
13 applications from a centralized office;

14 B. Total all permit fees due from a business, collect those fees on a semiannual basis,
15 with 1/2 of the total fees due by January 1st and 1/2 of the total fees due by July 1st,
16 and distribute the fees to the appropriate funds or permitting entities;

17 C. Forward a copy of the appropriate permit application to any commission,
18 department, municipality or other agency that has responsibility for permitting that
19 retail business;

20 D. Develop a tracking system to track permits issued by state agencies. This system
21 must at a minimum include information on the applicant, agency involvement, time
22 elapsed or expended on the permit and action taken;

23 E. Coordinate and supervise the permitting process to ensure that all involved state
24 agencies process the applications and complete any necessary inspections in a timely
25 fashion; and

26 F. Respond to inquiries from the business community and requests for information
27 from the individual permitting entities, including reports on the status of an
28 application.

29 A retail business is not required to participate in the retail business permitting program.
30 An enforcement action taken against a retail business for a permit obtained through the
31 retail business permitting program does not affect other permits issued to that same retail
32 business through that program.

33 **6. Municipal permitting agents.** By ~~January 1, 1995~~ February 1, 2012, the ~~director~~
34 ~~ombudsman~~ shall establish a municipal centralized permitting program.

35 A. Upon application by the municipal officers of a municipality and upon evidence
36 that the municipality meets all qualifications as determined by departmental
37 rulemaking, the ~~director~~ ombudsman shall appoint the municipality as a centralized
38 permitting agent to provide all permits for retail businesses. Upon evidence that a
39 municipality qualified to provide permits meets the qualifications for conducting the
40 inspection associated with any of those permits as determined by departmental
41 rulemaking, the ~~director~~ ombudsman shall appoint that municipality as an agent to
42 provide that inspection for retail businesses with less than 10,000 square feet of retail
43 space. The ombudsman shall ensure that municipalities appointed as agents for

1 purposes of inspection are qualified and capable of conducting those inspections in a
2 manner that ensures compliance with all applicable public health and safety
3 requirements. Retail businesses shall pay the municipality an additional fee of \$4 for
4 each permit included in the consolidated application up to a limit of \$40.
5 Municipalities may retain 1/2 of all fees collected for permits requiring inspection.
6 The remaining 1/2 of those permit fees and all fees for permits not requiring
7 inspection must be remitted to the department, which shall remit the fees to the
8 issuing agency. A municipality with a population of less than 4,000 ~~population~~ may
9 contract with an appointed municipality for centralized permitting and inspection
10 services. A ~~retailer~~ retail business is not required to participate in the municipal
11 central permitting program.

12 B. The ~~director~~ ombudsman shall make permitting and inspection training programs
13 available to a municipality seeking appointment or appointed as a central permitting
14 agent. The municipality shall pay a fee of \$25 for each person receiving permitting
15 training and \$100 for each person receiving inspection training.

16 C. A business that seeks to determine why it has not received its permits must be
17 directed to the municipal office where the application was filed. That office shall
18 bring the matter to the attention of the department, which shall contact the
19 appropriate issuing agency.

20 D. A joint standing committee of the Legislature that recommends legislation that
21 involves a new permit for retail businesses shall indicate in the legislation whether
22 the permit is to be included in the municipal centralized permitting program.

23 During a review under Title 3, chapter 35 of a permit issuing agency, the joint
24 standing committee having responsibility for the review shall recommend whether
25 any of the permits issued by that agency should be included in the municipal
26 centralized permitting program.

27 The ~~director~~ ombudsman may extend by rulemaking, but may not curtail, the
28 department's centralized permitting program or the municipal centralized permitting
29 program, except that the programs may not be extended to include additional issuing
30 agencies.

31 **7. Goal and evaluation.** It is the goal of the programs established in subsections 5
32 and 6 for retail businesses to obtain permits more quickly at no additional cost to the
33 taxpayers of the State. The ~~director~~ ombudsman shall devise and implement a program of
34 data collection and analysis that allows a determination as to whether these goals have
35 been met. This program must include the collection of benchmark data before the
36 initiation of the programs and an enumeration of the number of municipalities
37 participating in the program. ~~In analyzing costs, the director shall amortize the costs of~~
38 ~~computers or computer programs necessary for the program.~~ By January 1, ~~1994~~ 15,
39 2012 and every 2 years after that date, the ~~director~~ ombudsman shall prepare and submit a
40 report to the joint standing committee of the Legislature having jurisdiction over
41 economic development matters ~~based on this data and a recommendation~~ regarding the
42 effectiveness of the program and any recommendations as to why the retail business
43 program and the municipal centralized permitting program should not be expanded to
44 other sizes or types of businesses, to other issuing agencies and to smaller municipalities.

COMMITTEE AMENDMENT

1 The first report must contain an assessment of the levels of willingness of municipalities
2 to participate in the programs established by this section.

3 **8. Report.** By January 15, 2012 and at least annually thereafter, the ombudsman
4 shall report to the Governor and the joint standing committee of the Legislature having
5 jurisdiction over economic development matters about the program with any
6 recommendations for changes in the statutes to improve the program and its delivery of
7 services to businesses. The joint standing committee of the Legislature having jurisdiction
8 over economic development matters may report out a bill relating to the program.

9 **Sec. C-3. Report.** By February 15, 2012, the ombudsman for the Business
10 Ombudsman Program established pursuant to the Maine Revised Statutes, Title 5, section
11 13063 within the Department of Economic and Community Development, Office of
12 Business Development shall provide a report to the joint standing committee of the
13 Legislature having jurisdiction over economic development matters on the effectiveness
14 of comprehensive permit information and assistance services to businesses within the
15 Business Ombudsman Program, as well as the program's success in implementing the
16 retail business and municipal centralized permitting programs required pursuant to Title
17 5, section 13063. In preparing the report, the ombudsman shall work with the network
18 manager of InforMe and the director of the Office of Information Systems to identify
19 ways to incorporate electronic commerce options into the centralized permitting programs
20 and shall include recommendations on those options in the report. The joint standing
21 committee of the Legislature having jurisdiction over economic development matters may
22 report out a bill to the Second Regular Session of the 125th Legislature relating to the
23 permitting programs within the Business Ombudsman Program.

24 **PART D**

25 **Sec. D-1. 5 MRSA §57**, as amended by PL 2007, c. 676, §1, is repealed.

26 **Sec. D-2. 5 MRSA c. 5, sub-c. 2** is enacted to read:

27 **SUBCHAPTER 2**

28 **SPECIAL ADVOCATE**

29 **§90-N. Bureau established**

30 The Bureau of the Special Advocate, referred to in this subchapter as "the bureau," is
31 established within the Department of the Secretary of State to assist in resolving
32 regulatory enforcement actions affecting small businesses that, if taken, are likely to
33 result in significant economic hardship and to advocate for small business interests in
34 other regulatory matters.

35 **§90-O. Definitions**

36 As used in this subchapter, unless the context otherwise indicates, the following
37 terms have the following meanings.

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

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

3 **3. Complaint.** "Complaint" means a request to the special advocate for assistance
4 under section 90-Q.

5 **4. Regulatory impact notice.** "Regulatory impact notice" means a written notice
6 from the Secretary of State to the Governor as provided in section 90-S.

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

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

11 B. Termination of employees of the small business.

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

14 **7. Special advocate.** "Special advocate" means the person appointed pursuant to
15 section 90-P.

16 **§90-P. Special advocate; appointment and qualifications**

17 The Secretary of State shall appoint a special advocate to carry out the purposes of
18 this subchapter. The special advocate shall serve at the pleasure of the Secretary of State.

19 **§90-Q. Small business requests for assistance**

20 A small business may file a complaint requesting the assistance of the special
21 advocate in any agency enforcement action initiated against that small business. The
22 special advocate may provide assistance to the small business in accordance with section
23 90-R, subsection 2. The special advocate shall encourage small businesses to request the
24 assistance of the special advocate as early in the regulatory proceeding as possible.
25 Before providing any assistance, the special advocate shall provide a written disclaimer to
26 the small business stating that the special advocate is not acting as an attorney
27 representing the small business, that no attorney-client relationship is established and that
28 no attorney-client privilege can be asserted by the small business as a result of the
29 assistance provided by the special advocate under this subchapter.

30 **§90-R. Powers and duties of the special advocate**

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

36 **2. Advocate on behalf of an aggrieved small business.** Upon receipt of a
37 complaint requesting assistance under section 90-Q, the special advocate may:

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

1 B. After reviewing the complaint and discussing the complaint with the small
2 business and the agency that initiated the agency enforcement action, determine
3 whether, in the opinion of the special advocate, the complaint arises from an agency
4 enforcement action that is likely to result in a significant economic hardship to the
5 small business;

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

11 D. If the special advocate determines that an agency enforcement action applies
12 statutes or rules in a manner that is likely to result in a significant economic hardship
13 to the small business, when an alternative means of effective enforcement is possible,
14 recommend to the Secretary of State that the secretary issue a regulatory impact
15 notice to the Governor.

16 **§90-S. Regulatory impact notice**

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

32 **§90-T. Regulatory Fairness Board**

33 The Regulatory Fairness Board, referred to in this section as "the board," is
34 established within the Department of the Secretary of State to hear testimony and to
35 report to the Legislature and the Governor at least annually on regulatory and statutory
36 changes necessary to enhance the State's business climate.

37 **1. Membership.** The board consists of the Secretary of State, who shall serve as the
38 chair of the board and 4 public members who are owners, operators or officers of
39 businesses operating in different regions of the State, appointed as follows:

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

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

1 C. Two public members appointed by the Governor, one of whom represents a
2 business with fewer than 50 employees and one of whom represents a business with
3 fewer than 20 employees.

4 The Secretary of State shall inform the joint standing committee of the Legislature having
5 jurisdiction over business matters in writing upon the appointment of each member.
6 Except for the Secretary of State, an officer or employee of State Government may not be
7 a member of the board.

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

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

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

14 A. Meet at least 3 times a year to review complaints submitted to the special
15 advocate;

16 B. Review the status of complaints filed with the special advocate and regulatory
17 impact notices issued by the Secretary of State; and

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

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

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

27 **Sec. D-3. 5 MRSA §12004-I, sub-§2-G,** as enacted by PL 2007, c. 676, §2, is
28 amended to read:

29 **2-G.**

30 Business ~~Maine~~ Regulatory Expenses Only 5 MRSA ~~§57~~ §90-T
31 Fairness Board

32
33 **Sec. D-4. Maine Revised Statutes headnote amended; revision clause.** In
34 the Maine Revised Statutes, Title 5, chapter 5, before section 81, the headnote
35 "subchapter 1, general provisions" is enacted and the Revisor of Statutes shall implement
36 this revision when updating, publishing or republishing the statutes.

37 **Sec. D-5. Transition provisions; Regulatory Fairness Board.** The terms of
38 members appointed to the Maine Regulatory Fairness Board under the former Maine
39 Revised Statutes, Title 5, section 57 are terminated on the effective date of this Act.

1 Notwithstanding Title 5, section 90-T, subsection 2, the initial terms of members
2 appointed to the Regulatory fairness Board must be staggered as follows:

- 3 1. The member appointed by the President of the Senate shall serve an initial term of
4 2 years;
- 5 2. The member appointed by the Speaker of the House shall serve an initial term of 2
6 years;
- 7 3. The first member appointed by the Governor shall serve an initial term of one
8 year; and
- 9 4. The 2nd member appointed by the Governor shall serve an initial term of 3 years.

10 PART E

11 **Sec. E-1. 5 MRSA §8057-A, sub-§4**, as enacted by PL 1989, c. 574, §7, is
12 amended to read:

13 **4. Adoption of rules.** At the time of adoption of any rule, the agency shall file with
14 the Secretary of State the information developed by the agency pursuant to subsections 1
15 and 2 and, except for emergency rules, citations for up to 3 primary sources of
16 information relied upon by the agency in adopting the rule. Professional judgment may be
17 cited as one of those primary sources of information. Citations to primary sources of
18 information are not subject to judicial review.

19 **Sec. E-2. 5 MRSA §8063-B** is enacted to read:

20 **§8063-B. Identification of primary source of information**

21 For every rule proposed by an agency, except for emergency rules, the agency shall
22 file with the Secretary of State citations for up to 3 primary sources of information relied
23 upon by the agency in developing the proposed rule. The agency shall include that
24 information with a copy of the proposed rule when responding to a request under section
25 8053, subsection 3-A. Professional judgment may be cited as one of those primary
26 sources of information. Citations to primary sources of information are not subject to
27 judicial review.

28 PART F

29 **Sec. F-1. Rules; isopropyl alcohol and wood ash.** The Commissioner of
30 Environmental Protection shall adopt or amend rules as necessary that, consistent with
31 rules adopted by the United States Environmental Protection Agency, provide that
32 isopropyl alcohol and wood ash are not hazardous waste or solid waste if being used,
33 reused or recycled as effective substitutes for commercial products. Rules adopted under
34 this section are routine technical rules pursuant to the Maine Revised Statutes, Title 5,
35 chapter 375, subchapter 2-A.

36 **Sec. F-2. Rules; beneficial reuse.** The Board of Environmental Protection shall
37 adopt or amend rules as necessary that, consistent with rules adopted by the United States
38 Environmental Protection Agency governing the transfer, management, reclamation and

1 reuse of hazardous and solid waste, allow and encourage the beneficial reuse of
2 hazardous and solid wastes consistent with the protection of public health and the
3 environment in order to preserve resources, conserve energy and reduce the need to
4 dispose of such wastes. Rules adopted under this section are major substantive rules
5 pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

6 **PART G**

7 **Sec. G-1. 5 MRSA §8002, sub-§9**, as amended by PL 1989, c. 574, §1, is further
8 amended to read:

9 **9. Rule.** "Rule" is defined as follows.

10 A. "Rule" means the whole or any part of every regulation, standard, code, statement
11 of policy, or other agency guideline or statement of general applicability, including
12 the amendment, suspension or repeal of any prior rule, that is or is intended to be
13 judicially enforceable and implements, interprets or makes specific the law
14 administered by the agency, or describes the procedures or practices of the agency.

15 B. The term does not include:

16 (1) Policies or memoranda concerning only the internal management of an
17 agency or the State Government and not judicially enforceable;

18 (2) Advisory rulings ~~issued~~ issued under subchapter ~~III~~ 3;

19 (3) Decisions issued in adjudicatory proceedings; or

20 (4) Any form, instruction or explanatory statement of policy ~~which~~ that in itself
21 is not judicially enforceable, and ~~which~~ that is intended solely as advice to assist
22 persons in determining, exercising or complying with their legal rights, duties or
23 privileges.

24 A rule is not judicially enforceable unless it is adopted in a manner consistent with this
25 chapter.

26 **PART H**

27 **Sec. H-1. 38 MRSA §341-B**, as enacted by PL 1989, c. 890, Pt. A, §13 and
28 affected by §40, is amended to read:

29 **§341-B. Purpose of the board**

30 The purpose of the Board of Environmental Protection is to provide informed,
31 independent and timely decisions on the interpretation, administration and enforcement of
32 the laws relating to environmental protection and to provide for credible, fair and
33 responsible public participation in department decisions. The board shall fulfill its
34 purpose through major substantive rulemaking, decisions on selected permit applications,
35 ~~review~~ decisions on appeals of the commissioner's licensing and enforcement actions and
36 recommending changes in the law to the Legislature.

1 **Sec. H-2. 38 MRSA §341-C, sub-§1**, as amended by PL 1995, c. 3, §6, is further
2 amended to read:

3 **1. Appointments.** The board consists of ~~40~~ 7 members appointed by the Governor,
4 subject to review by the joint standing committee of the Legislature having jurisdiction
5 over natural resource matters and to confirmation by the Legislature.

6 **Sec. H-3. 38 MRSA §341-C, sub-§2**, as amended by PL 1997, c. 346, §2, is
7 further amended to read:

8 **2. Qualifications and requirements.** Members of the board must be chosen to
9 represent the broadest possible interest and experience that can be brought to bear on the
10 administration and implementation of this Title and all other laws the board is charged
11 with administering. ~~At least 4 members must be residents of the First Congressional~~
12 ~~District and at least 4 members must be residents of the Second Congressional District.~~
13 At least 3 members must have technical or scientific backgrounds in environmental issues
14 and no more than 4 members may be residents of the same congressional district. The
15 boundaries of the congressional districts are defined in Title 21-A, chapter 15. A county
16 commissioner, county employee, municipal official or municipal employee is not
17 considered to hold an incompatible office for purposes of simultaneous service on the
18 board. If a county or municipality is a participant in an adjudicatory proceeding before
19 the board, a commissioner, official or employee from that county or municipality may not
20 participate in that proceeding.

21 **Sec. H-4. 38 MRSA §341-D, sub-§1-B**, as amended by PL 1999, c. 784, §6, is
22 repealed.

23 **Sec. H-5. 38 MRSA §341-D, sub-§1-C** is enacted to read:

24 **1-C. Rulemaking.** The board shall adopt, amend or repeal rules in accordance with
25 section 341-H.

26 **Sec. H-6. 38 MRSA §341-D, sub-§2**, as amended by PL 2009, c. 615, Pt. E, §1,
27 is further amended to read:

28 **2. Permit and license applications.** Except as otherwise provided in this
29 subsection, the board shall decide each application for approval of permits and licenses
30 that in its judgment represents a project of statewide significance. A project of statewide
31 significance is a project that meets at least 3 of the following 4 criteria:

- 32 ~~A. Involves a policy, rule or law that the board has not previously interpreted;~~
33 ~~B. Involves important policy questions that the board has not resolved;~~
34 ~~C. Involves important policy questions or interpretations of a rule or law that require~~
35 ~~reexamination; or~~
36 ~~D. Has generated substantial public interest.~~
37 E. Will have an environmental or economic impact in more than one municipality,
38 territory or county;
39 F. Involves an activity not previously permitted or licensed in the State;
40 G. Is likely to come under significant public scrutiny; and

1 H. Is located in more than one municipality, territory or county.

2 The board shall also decide each application for approval of permits and licenses that is
3 referred to it jointly by the commissioner and the applicant.

4 The board shall assume jurisdiction over applications referred to it under section 344,
5 subsection 2-A; when it finds that ~~the~~ at least 3 of the 4 criteria of this subsection have
6 been met.

7 The board may vote to assume jurisdiction of an application if it finds that ~~one or more of~~
8 ~~the~~ at least 3 of the 4 criteria ~~in~~ of this subsection have been met.

9 ~~Any interested party may request the board to assume jurisdiction of an application.~~

10 The board may not assume jurisdiction over an application for an expedited wind energy
11 development as defined in Title 35-A, section 3451, subsection 4, for a certification
12 pursuant to Title 35-A, section 3456 or for a general permit pursuant to section 480-HH
13 or section 636-A.

14 Prior to holding a hearing on an application over which the board has assumed
15 jurisdiction, the board shall ensure that the department and any outside agency review
16 staff assisting the department in its review of the application have submitted to the
17 applicant and the board their review comments on the application and any additional
18 information requests pertaining to the application and that the applicant has had an
19 opportunity to respond to those comments and requests. If additional information needs
20 arise during the hearing, the board shall afford the applicant a reasonable opportunity to
21 respond to those information requests prior to the close of the hearing record.

22 **Sec. H-7. 38 MRSA §341-D, sub-§3**, as amended by PL 1995, c. 642, §§1 and 2,
23 is repealed and the following enacted in its place:

24 **3. Modification or corrective action.** At the request of the commissioner and after
25 written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter
26 4, the board may modify in whole or in part any license, or may issue an order
27 prescribing necessary corrective action, whenever the board finds that any of the criteria
28 in section 342, subsection 11-B have been met.

29 For the purposes of this subsection, "license" includes any license, permit, order, approval
30 or certification issued by the department.

31 **Sec. H-8. 38 MRSA §341-D, sub-§4, ¶B**, as amended by PL 2007, c. 661, Pt. B,
32 §2, is repealed.

33 **Sec. H-9. 38 MRSA §341-D, sub-§4, ¶D**, as amended by PL 2009, c. 615, Pt. E,
34 §2, is further amended to read:

35 D. License or permit decisions regarding an expedited wind energy development as
36 defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to
37 section 480-HH or section 636-A. In reviewing an appeal of a license or permit
38 decision by the commissioner under this paragraph, the board shall base its decision
39 on the administrative record of the department, including the record of any
40 adjudicatory hearing held by the department, and any supplemental information
41 allowed by the board ~~using the standards contained in subsection 5~~ for
42 supplementation of the record. The board may remand the decision to the department

1 for further proceedings if appropriate. The chair of the Public Utilities Commission
2 or the chair's designee serves as a nonvoting member of the board and is entitled to
3 fully participate but is not required to attend hearings when the board considers an
4 appeal pursuant to this paragraph. The chair's participation on the board pursuant to
5 this paragraph does not affect the ability of the Public Utilities Commission to submit
6 information to the department for inclusion in the record of any proceeding before the
7 department.

8 **Sec. H-10. 38 MRSA §341-D, sub-§5**, as amended by PL 1993, c. 356, §1, is
9 repealed.

10 **Sec. H-11. 38 MRSA §341-D, sub-§6**, as enacted by PL 1989, c. 890, Pt. A, §13
11 and affected by §40, is repealed and the following enacted in its place:

12 **6. Enforcement.** The board shall hear appeals of emergency orders pursuant to
13 section 347-A, subsection 3.

14 **Sec. H-12. 38 MRSA §341-D, sub-§7**, as enacted by PL 1989, c. 890, Pt. A, §13
15 and affected by §40, is amended to read:

16 **7. Reports to the Legislature.** The board shall report to the joint standing
17 committee of the Legislature having jurisdiction over ~~energy and~~ natural resource matters
18 by January 15th of the first regular session of each Legislature on the effectiveness of the
19 environmental laws of the State and any recommendations for amending those laws or the
20 laws governing the board.

21 **Sec. H-13. 38 MRSA §341-E**, as enacted by PL 1989, c. 890, Pt. A, §13 and
22 affected by §40, is amended to read:

23 **§341-E. Board meetings**

24 Board meetings held under section 341-D, ~~subsections 1 to 7~~, are governed by the
25 following provisions.

26 **1. Quorum.** ~~Six~~ Four members of the board constitute a quorum. A quorum is
27 required to open a meeting and for a vote of the board, ~~6 members constitute a quorum~~
28 ~~for rule-making hearings held by the board and 3 members constitute a quorum for other~~
29 ~~hearings held by the board.~~

30 **2. Proceedings recorded.** All proceedings before the board must be recorded
31 electronically.

32 **Sec. H-14. 38 MRSA §341-H** is enacted to read:

33 **§341-H. Departmental rulemaking**

34 The department may adopt, amend or repeal rules and emergency rules necessary for
35 the interpretation, implementation and enforcement of any provision of law that the
36 department is charged with administering as provided in this section.

37 **1. Rule-making authority of the board.** Notwithstanding any other provision of
38 this Title, and except as provided in this subsection, the board shall adopt, amend or
39 repeal only those rules of the department designated as major substantive rules pursuant
40 to Title 5, chapter 375, subchapter 2-A. The board shall also adopt, amend and repeal

1 routine technical rules as necessary for the conduct of the department's business,
2 including the processing of applications, the conduct of hearings and other administrative
3 matters.

4 **2. Rule-making authority of the commissioner.** Notwithstanding any other
5 provision of this Title, the commissioner shall adopt, amend or repeal only those rules of
6 the department that are not designated as major substantive rules pursuant to Title 5,
7 chapter 375, subchapter 2-A.

8 **3. Duties of department.** The department shall:

9 A. Identify in its regulatory agenda under Title 5, section 8060, when feasible, a
10 proposed rule or provision of a proposed rule that is anticipated to be more stringent
11 than a federal standard, if an applicable federal standard exists;

12 B. During the consideration of any proposed rule, when feasible, and using
13 information available to it, identify provisions of the proposed rule that the
14 department believes would impose a regulatory burden more stringent than the
15 burden imposed by the federal standard, if such a federal standard exists, and shall
16 explain in a separate section of the basis statement the justification for the difference
17 between the agency rule and the federal standard; and

18 C. Notwithstanding Title 5, chapter 375, subchapter 2 or 2-A, the department shall
19 accept and consider additional public comment on a proposed rule following the
20 close of the formal rule-making comment period at a meeting that is not a public
21 hearing only if the additional public comment is directly related to comments
22 received during the formal rule-making comment period or is in response to changes
23 to the proposed rule. Public notice of the meeting must comply with Title 1, section
24 406 and must state that the department will accept additional public comment on the
25 proposed rule at that meeting.

26 **4. Legislative review of a rule.** If a rule adopted by the department is the subject of
27 a request for legislative review of a rule under Title 5, chapter 377-A, the Executive
28 Director of the Legislative Council shall immediately notify the department of that
29 request and of the legislative committee's decision under that chapter on whether or not to
30 review the rule.

31 **Sec. H-15. 38 MRSA §342, sub-§9,** as enacted by PL 1989, c. 890, Pt. A, §18
32 and affected by §40, is amended to read:

33 **9. Rules.** The commissioner may adopt, amend or repeal, in accordance with section
34 341-H, routine technical rules under Title 5, chapter 375, subchapter 2-A and shall submit
35 to the board new or amended major substantive rules for its adoption.

36 **Sec. H-16. 38 MRSA §342, sub-§11-A,** as enacted by PL 1999, c. 784, §8, is
37 amended to read:

38 **11-A. Recommendations and assistance to board.** The commissioner shall make
39 recommendations to the board regarding proposed major substantive rules; permit and
40 license applications over which the board has jurisdiction; modification, ~~revocation or~~
41 ~~suspension of~~ or corrective action on licenses; appeals of license and permit decisions;
42 and other matters considered by the board. The commissioner shall also provide the
43 board with the technical services of the department.

1 **Sec. H-17. 38 MRSA §342, sub-§11-B** is enacted to read:

2 **11-B. Revoke or suspend licenses and permits.** After written notice and
3 opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the commissioner
4 may act to revoke or suspend a license or recommend that the board modify or take
5 corrective action on a license whenever the commissioner finds that:

6 A. The licensee has violated any condition of the license;

7 B. The licensee has obtained a license by misrepresenting or failing to disclose fully
8 all relevant facts;

9 C. The licensed discharge or activity poses a threat to human health or the
10 environment;

11 D. The license fails to include any standard or limitation legally required on the date
12 of issuance;

13 E. There has been a change in any condition or circumstance that requires revocation
14 or suspension of a license;

15 F. There has been a change in any condition or circumstance that requires a
16 corrective action or a temporary or permanent modification of the terms of the
17 license;

18 G. The licensee has violated any law administered by the department; or

19 H. The license fails to include any standard or limitation required pursuant to the
20 federal Clean Air Act Amendments of 1990.

21 For the purposes of this subsection, "license" includes any license, permit, order, approval
22 or certification issued by the department and "licensee" means the holder of the license.

23 **Sec. H-18. 38 MRSA §344, sub-§2-A, ¶A**, as amended by PL 2009, c. 615, Pt.
24 E, §3, is further amended to read:

25 A. Except as otherwise provided in this paragraph, the commissioner shall decide as
26 expeditiously as possible if an application meets ~~one or more~~ 3 of the 4 criteria set
27 forth in section 341-D, subsection 2 and shall request that the board assume
28 jurisdiction of that application. If an interested person requests that the commissioner
29 refer an application to the board and the commissioner determines that the criteria are
30 not met, the commissioner shall notify the board of that request. If at any subsequent
31 time during the review of an application the commissioner decides that the
32 application falls under section 341-D, subsection 2, the commissioner shall request
33 that the board assume jurisdiction of the application.

34 (1) The commissioner may not request the board to assume jurisdiction of an
35 application for any permit or other approval required for an expedited wind
36 energy development, as defined in Title 35-A, section 3451, subsection 4, a
37 certification pursuant to Title 35-A, section 3456 or a general permit pursuant to
38 section 480-HH or section 636-A. Except as provided in subparagraph (2), the
39 commissioner shall issue a decision on an application for an expedited wind
40 energy development, an offshore wind power project or a hydropower project, as
41 defined in section 632, subsection 3, that uses tidal action as a source of electrical

1 or mechanical power within 185 days of the date on which the department
2 accepts the application as complete pursuant to this section or within 270 days of
3 the department's acceptance of the application if the commissioner holds a
4 hearing on the application pursuant to section 345-A, subsection 1-A.

5 (2) The expedited review periods of 185 days and 270 days specified in
6 subparagraph (1) do not apply to the associated facilities, as defined in Title
7 35-A, section 3451, subsection 1, of the development if the commissioner
8 determines that an expedited review time is unreasonable due to the size,
9 location, potential impacts, multiple agency jurisdiction or complexity of that
10 portion of the development. If an expedited review period does not apply, a
11 review period specified pursuant to section 344-B applies.

12 The commissioner may stop the processing time with the consent of the applicant for
13 a period of time agreeable to the commissioner and the applicant.

14 **Sec. H-19. 38 MRSA §347-A, sub-§1, ¶A**, as amended by PL 2003, c. 245, §5,
15 is further amended to read:

16 A. Whenever it appears to the commissioner, after investigation, that there is or has
17 been a violation of this Title, of rules adopted under this Title or of the terms or
18 conditions of a license, permit or order issued by the board or the commissioner, the
19 commissioner may initiate an enforcement action by taking one or more of the
20 following steps:

21 (1) Resolving the violation through an administrative consent agreement
22 pursuant to subsection 4, signed by the violator and approved by the ~~board~~
23 commissioner and the Attorney General;

24 (2) Referring the violation to the Attorney General for civil or criminal
25 prosecution;

26 (3) Scheduling and holding an enforcement hearing on the alleged violation
27 pursuant to subsection 2; or

28 (4) With the prior approval of the Attorney General, commencing a civil action
29 pursuant to section 342, subsection 7 and the Maine Rules of Civil Procedure,
30 Rule 3.

31 **Sec. H-20. 38 MRSA §347-A, sub-§4, ¶D**, as enacted by PL 1993, c. 204, §2, is
32 amended to read:

33 D. The public may make written comments to the ~~board~~ commissioner at the ~~board's~~
34 commissioner's discretion on an administrative consent agreement entered into by the
35 commissioner ~~and approved by the board~~.

36 **Sec. H-21. 38 MRSA §353, sub-§3**, as amended by PL 1997, c. 624, §2, is
37 further amended to read:

38 **3. License fee.** The license fee must be paid at the time of filing the application.
39 Failure to pay the license fee at the time of filing results in the application being returned
40 to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for
41 licenses issued for a 10-year term must be paid at the time of filing the application. The

1 remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5
2 years after issuance of the license. The commissioner shall refund the license fee if the
3 board or commissioner denies the application or if the application is withdrawn by the
4 applicant. Notwithstanding the provisions of this subsection, the license fee for a
5 subdivision must be paid prior to the issuance of the license.

6 The license fees for nonferrous metal mining must be paid annually on the anniversary
7 date of the license for the life of the project, up to and including the period of closure and
8 reclamation.

9 The license fee for a solid waste facility must be paid annually. Failure to pay the annual
10 fee within 30 days of the anniversary date of a license is sufficient grounds for
11 modification, revocation or suspension of the license under section 341-D, subsection 3,
12 ~~paragraph A~~ or section 342, subsection 11-B.

13 **Sec. H-22. 38 MRSA §414-A, sub-§5, ¶C**, as enacted by PL 1997, c. 794, Pt. A,
14 §25, is amended to read:

15 C. Notwithstanding Title 5, section 10051, the board may modify, ~~revoke or suspend~~
16 a license and the commissioner may revoke or suspend a license when the board or
17 the commissioner finds that any of the conditions specified in section ~~341-D~~ 342,
18 subsection ~~3~~ 11-B exist or upon an application for transfer of a license.

19 **Sec. H-23. 38 MRSA §489-A, sub-§10**, as affected by PL 1989, c. 890, Pt. A,
20 §40 and amended by Pt. B, §102, is further amended to read:

21 **10. Appeal of decision by commissioner to review.** An aggrieved party may
22 appeal the decision by the commissioner to exert or not exert state jurisdiction over the
23 proposed project to the board. Review and actions taken by the department are subject to
24 appeal procedures governing the department under section 341-D, ~~subsections~~ subsection
25 ~~4 and 5~~.

26 **Sec. H-24. Transition provisions.** The following transition provisions apply to
27 changes in the membership of the Board of Environmental Protection, rulemaking and the
28 impact on pending proceedings.

29 **1. Board membership.** Notwithstanding the Maine Revised Statutes, Title 38,
30 section 341-C, the terms of members of the Board of Environmental Protection serving
31 on the effective date of this Act that would otherwise expire prior to September 16, 2011
32 are extended to September 16, 2011 and expire on that date.

33 **2. Effect on existing rules.** All rules adopted by the Board of Environmental
34 Protection prior to the effective date of this Act that were not adopted as major
35 substantive rules are deemed to be routine technical rules adopted by the Commissioner
36 of Environmental Protection and continue in effect until amended or rescinded by the
37 commissioner; and

38 **3. Effect on pending proceedings.** All regulatory proceedings pending before the
39 Board of Environmental Protection or the Commissioner of Environmental Protection on
40 the effective date of this Act are subject to the Maine Revised Statutes, Title 1, section
41 302.

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PART I

Sec. I-1. Department of Health and Human Services to amend rules. The Department of Health and Human Services shall by emergency rulemaking rescind its adoption of Rule 10-144, Chapter 30: Maine Uniform Accounting and Auditing Practices for Community Agencies that took effect January 1, 2011 and reinstate Rule 10-144, Chapter 30 as in effect on December 31, 2010.

Sec. I-2. New rulemaking required. In accordance with the Maine Administrative Procedure Act, the Commissioner of Health and Human Services shall adopt such amendments to the Department of Health and Human Services' Rule 10-144, Chapter 30 to avoid duplication of federal standards and preserve the authority of community agency boards. In adopting those rules, the commissioner shall work cooperatively and in consultation with the Advisory Committee to the Commissioner established in the Maine Revised Statutes, Title 5, section 1660-L. Amendments to Rule 10-144, Chapter 30 required by this Part must be provisionally adopted by the department as major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A not later than December 31, 2011 and submitted to the Second Regular Session of the 125th Legislature for consideration. If approved by the Legislature, those rules must be finally adopted by the department and in effect on July 1, 2012. Subsequent revisions to those rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. I-3. Annual report. The Commissioner of Health and Human Services shall ensure that the Advisory Committee to the Commissioner is convened each year as necessary to fulfill its annual reporting requirements under the Maine Revised Statutes, Title 5, section 1660-L.

PART J

Sec. J-1. 25 MRSA §2448-A, sub-§1, as enacted by PL 2009, c. 364, §2, is amended to read:

1. Projects. A municipality registered pursuant to this section may review projects of public buildings ~~that constitute a mercantile occupancy over 3,000 square feet, a hotel, a motel or a business occupancy of 2 or more stories~~ as described in section 2448.

Sec. J-2. 25 MRSA §2448-A, sub-§7, as enacted by PL 2009, c. 364, §2, is repealed and the following enacted in its place:

7. Application review process. Upon determination by the municipal reviewing authority that an application for a permit or permit amendment under this section is complete for processing, the municipal reviewing authority shall submit to the commissioner within 14 days of that determination a copy of the project application.

Sec. J-3. 25 MRSA §2448-A, sub-§8, as enacted by PL 2009, c. 364, §2, is repealed.

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PART K

Sec. K-1. Paperwork reduction working group. The Secretary of State shall convene a working group consisting of representatives of state agencies, small businesses recommended by the Maine chapter of the National Federation of Independent Businesses, other private businesses and other interested parties to examine opportunities for reducing the paperwork associated with the filing of forms with the office of the Secretary of State. The Secretary of State shall report the findings of the working group by February 1, 2012 to the Joint Standing Committee on State and Local Government.

PART L

Sec. L-1. 3 MRSA c. 36 is enacted to read:

CHAPTER 36

RETROSPECTIVE REVIEW OF AGENCY RULES

§971. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Agency. "Agency" means any body of State Government authorized by law to adopt rules under Title 5, chapter 375.

2. Committee of jurisdiction. "Committee of jurisdiction" means the joint standing committee of the Legislature having jurisdiction over the policy and subject matter of a rule.

3. Retrospective review. "Retrospective review" means a review of a rule by an agency for any change in the relevance, clarity and reasonableness of the rule between the time of its initial adoption and the time of the review.

§972. Direction from committees of jurisdiction

On or before February 1st of any first regular session of the Legislature, a committee of jurisdiction may direct an agency in writing to undertake a retrospective review of one or more rules under the jurisdiction of the committee.

§973. Agency review

When directed by a committee of jurisdiction to undertake a retrospective review of a rule under this chapter, an agency shall evaluate the continued relevance, clarity and reasonableness of the rule by examining:

1. Relevance. The extent to which the rule may have over time become redundant, inconsistent or in conflict with the original goals and objectives for which the rule was first proposed, with other rules or with any underlying federal or state law or regulation that initially served as the basis for the rule;

SUMMARY

This amendment replaces the bill and makes the bill an emergency. All provisions take effect when approved, except those that reduce the size of the Board of Environmental Protection and that change the qualifications of the board members, which take effect on September 16, 2011.

This amendment proposes the following.

Part A establishes a voluntary environmental audit program within the Department of Environmental Protection that provides incentives, including reduced penalties, to regulated entities that discover, disclose and correct environmental violations through an environmental audit program or a compliance management system.

Part B authorizes agencies to conduct a cost-benefit analysis of proposed rules in instances in which the consideration of costs is permitted and when the agency determines that sufficient staff expertise and budgeted resources exist within the agency to complete the analysis. Part B lists the minimum elements to be included in a cost-benefit analysis, requires the agency to provide any such analysis to any person requesting a copy of the proposed rule and states that the cost-benefit analysis is not subject to judicial review.

Part C renames the business assistance and referral program currently within the Department of Economic and Community Development, Office of Business Development as "the Business Ombudsman Program." The Business Ombudsman Program is charged with assisting businesses by resolving problems between businesses and state agencies, facilitating responsiveness of agencies to business needs, referring businesses to the agency that can best provide the business services or assistance requested, providing comprehensive permit information and services, including a consolidated permit procedure for all types of retail business licenses, and serving as a central clearinghouse of business assistance programs and services available in the State.

Part C also requires the Director of the Office of Business Development, acting as the ombudsman, to:

1. Report to the Legislature on the success of the central permitting program for all permits required by retail businesses selling directly to the consumer by January 15, 2012;
2. Report to the Governor and the Legislature about the Business Ombudsman Program with any recommendations for changes in the statutes to improve the program and its delivery of services to businesses; and
3. Report by February 15, 2012 to the joint standing committee of the Legislature having jurisdiction over economic development matters on the effectiveness of the comprehensive permit information and assistance services and municipal centralized permitting programs.

Part D creates the Bureau of the Special Advocate within the Department of the Secretary of State. The bureau is headed by a special advocate who is charged with general advocacy on behalf of small business interests within the state regulatory process and who is authorized to assist specific small businesses in seeking a resolution of proposed or initiated agency enforcement actions that may result in the closure of the

1 business or the termination of employees, either through monetary penalties or
2 suspension or revocation of a business license. The special advocate may assist the small
3 business during the regulatory process in a manner consistent with law. If the special
4 advocate determines that an agency enforcement action applies statutes or rules in a
5 manner that is likely to result in a significant economic hardship to the business, when an
6 alternative means of effective enforcement is possible, the special advocate may
7 recommend to the Secretary of State that the secretary issue a regulatory impact notice to
8 the Governor, asking that the Governor take action, as appropriate and in a manner
9 consistent with all applicable laws, to address the issues raised by that agency
10 enforcement action. That notice must also be sent to the agency and to the joint standing
11 committee of the Legislature having jurisdiction over that agency.

12 Part D also changes the structure and duties of the Maine Regulatory Fairness Board
13 within the Department of the Secretary of State and renames it the Regulatory Fairness
14 Board.

15 Part E requires agencies to include citations for up to 3 primary sources of
16 information relied upon by an agency when proposing or adopting rules, except for
17 emergency rules. Professional judgment may be cited as one of those primary sources of
18 information. Citations to primary sources of information are not subject to judicial
19 review.

20 Part F requires the Commissioner of Environmental Protection to adopt routine
21 technical rules or amend rules as necessary that, consistent with rules adopted by the
22 United States Environmental Protection Agency, provide that isopropyl alcohol and wood
23 ash are not hazardous waste or solid waste if being used, reused or recycled as effective
24 substitutes for commercial products.

25 Part F also requires the Board of Environmental Protection to adopt major substantive
26 rules or amend rules as necessary that, consistent with rules adopted by the United States
27 Environmental Protection Agency governing the transfer, management, reclamation and
28 reuse of hazardous and solid waste, allow and encourage the beneficial reuse of
29 hazardous and solid wastes, consistent with the protection of public health and the
30 environment, in order to preserve resources, conserve energy and reduce the need to
31 dispose of such wastes.

32 Part G amends the definition of the word "rule" within the Maine Administrative
33 Procedure Act to include agency guidelines and specifies that a rule is not judicially
34 enforceable unless it is adopted in a manner consistent with the Maine Administrative
35 Procedure Act.

36 Part H proposes a number of changes to the structure and functions of the Board of
37 Environmental Protection. Part H:

38 1. Reduces the size of the board from 10 members to 7 members and modifies the
39 qualifications of those members to specify that at least 3 members must have technical or
40 scientific backgrounds in environmental issues and that no more than 4 members may be
41 residents of the same congressional district. Pursuant to the emergency clause included in
42 this legislation, these changes do not take effect until September 16, 2011;

43 2. Limits the board's rule-making authority, in most instances, to the adoption of
44 major substantive rules or amendments to existing major substantive rules. The

1 Commissioner of Environmental Protection is authorized to adopt all other rules of the
2 department;

3 3. Makes the commissioner responsible for the granting of all licenses and permits,
4 except that the board is responsible for licenses and permits that either meet at least 3 of
5 the 4 criteria for projects of statewide significance or that are projects in which the
6 applicant and the commissioner jointly request that the board assume jurisdiction;

7 4. Requires that, prior to holding a hearing on an application over which the board
8 has assumed jurisdiction, the board ensures that the Department of Environmental
9 Protection and any outside agency review staff assisting the department in its review of
10 the application have submitted to the applicant and the board their review comments on
11 the application and any additional information requests pertaining to the application, and
12 that the applicant has had an opportunity to respond to those comments and requests. If
13 additional information needs arise during the hearing, the board shall afford the applicant
14 a reasonable opportunity to respond to those information requests prior to the close of the
15 hearing record;

16 5. Authorizes the commissioner to approve consent agreements rather than the board;

17 6. Repeals the board's authority to revoke or suspend a license or permit and vests
18 that authority with the commissioner. The board retains its authority to consider
19 modifications or corrective action on a license, but only on the recommendation of the
20 commissioner;

21 7. Repeals the board's authority to reconsider its action on a permit or license
22 application;

23 8. Repeals the ability for interested parties to request that the board assume
24 jurisdiction of an application;

25 9. Repeals the board's authority to advise the commissioner on enforcement priorities
26 and activities, advise the commissioner on the adequacy of penalties and enforcement
27 activities and approve administrative consent agreements. The board's authority to hear
28 appeals of emergency enforcement orders by the commissioner is retained;

29 10. Adds language stating that if a rule adopted by the department is the subject of a
30 request for legislative review of a rule under the Maine Revised Statutes, Title 5, chapter
31 377-A, the Executive Director of the Legislative Council shall immediately notify the
32 department of that request and of the legislative committee's decision under that chapter
33 on whether or not to review the rule; and

34 11. Includes transition language to provide for the orderly transition of the changes to
35 the board and for procedures pending before the department on the effective date of this
36 legislation. To allow the current board members time to complete work currently before
37 the board, the transition provisions also provide for a delayed effective date in the
38 reduction in the size of the board and to the eligibility criteria for board members to
39 September 16, 2011 and extends the terms of the members whose terms would otherwise
40 expire prior to September 16, 2011 to September 16, 2011.

41 Part I repeals rules adopted by the Department of Health and Human Services on
42 January 1, 2011 relating to the Maine uniform accounting and auditing practices for
43 community agencies and replaces them with the rules governing those auditing practices

1 that were in effect prior to January 1, 2011. Part I also directs the Commissioner of
2 Health and Human Services to work closely with the commissioner's advisory board in
3 adopting amendments to those rules that avoid duplication of federal auditing standards
4 and preserve the authority of individual community agency boards. Those amendments
5 must be provisionally adopted as major substantive rules by December 31, 2011 and
6 submitted to the Legislature for review in the Second Regular Session of the 125th
7 Legislature. If approved by the Legislature, those rules must be finally adopted by the
8 department and in effect on July 1, 2012. Part I also directs the commissioner to ensure
9 that the advisory committee submits annual written reports to the Legislature.

10 Part J expands the authority of municipalities registered by the Commissioner of
11 Public Safety to issue construction permits, including fire permits, to include issuance of
12 those permits for any building or structure constructed, operated or maintained for use by
13 the general public.

14 Part K directs the Secretary of State to convene a working group consisting of
15 representatives of state agencies, small businesses recommended by the Maine chapter of
16 the National Federation of Independent Businesses, other private businesses and other
17 interested parties to examine opportunities for reducing the paperwork associated with the
18 filing of forms with the office of the Secretary of State and to report the findings of the
19 working group by February 1, 2012 to the Joint Standing Committee on State and Local
20 Government.

21 Part L allows joint standing committees of the Legislature to direct agencies within
22 their jurisdiction to undertake retrospective reviews of agency rules for relevance, clarity
23 and reasonableness and to report their findings and recommendations to the legislative
24 committee the following year.

25 Part M directs the Commissioner of Economic and Community Development to work
26 collaboratively and in partnership with the Finance Authority of Maine, the Maine
27 International Trade Center and representatives of private sector business interests in
28 applying to the United States Department of Homeland Security, United States
29 Citizenship and Immigration Service for the designation of the State as a state regional
30 center for the purposes of reviewing and approving foreign investment projects under the
31 Immigrant Investor Pilot Program enacted in federal law under Public Law 102-395,
32 Section 610. The purpose of the pilot program is to encourage immigration through the
33 5th employment-based preference, EB-5, immigrant visa category by immigrants seeking
34 to enter the United States to invest from \$500,000 to \$1,000,000 in commercial
35 enterprises that will create at least 10 full-time jobs.

36 Part M also directs the Commissioner of Economic and Community Development to
37 report by January 15, 2012 to the Joint Standing Committee on Labor, Commerce,
38 Research and Economic Development on the progress of that application process and to
39 include in that report any statutory recommendations necessary to facilitate the State's
40 application or to effectively administer a federally designated regional center in the State.

41 **FISCAL NOTE REQUIRED**

42 **(See attached)**