STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND ELEVEN

S.P. 10 - L.D. 1

An Act To Ensure Regulatory Fairness and Reform

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:

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.

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

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

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

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

6. Regulated entity. "Regulated entity" means an entity subject to environmental requirements.

§349-N. Incentives

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

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

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

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

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

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

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

4. No routine request for environmental audit reports. The department may not request an environmental audit report in connection with a routine inspection of a regulated entity. If the department has reason to believe that a violation by a regulated

entity of an environmental requirement has occurred, the department may seek any information relevant to identifying violations or determining liability or the extent of harm resulting from the violation.

§349-O. Conditions of discovery

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

1. Systematic discovery. The violation was discovered through:

A. An environmental audit program; or

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

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

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

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

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

D. Violations discovered by a department inspection;

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

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

4. Discovery and disclosure independent of government or 3rd-party plaintiff. The regulated entity discovers and discloses to the department the potential violation prior to:

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

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

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

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

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

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

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

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

7. No repeat violations. The specific violation, or a closely related violation, has not occurred within the past 3 years at the same facility and has not occurred within the past 5 years as part of a pattern at multiple facilities owned or operated by the same

regulated entity. For the purposes of this subsection, a violation or closely related violation is any violation previously identified in a judicial or administrative order, a consent agreement or order, a complaint, letter of warning or notice of violation, a conviction or plea agreement or any act or omission for which the regulated entity has previously received penalty mitigation from the United States Environmental Protection Agency or the department;

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

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

§349-P. Economic benefit

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

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

§349-Q. Application

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

§349-R. Rules

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

PART B

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

§8063-A. Analysis of benefits and costs

In addition to the economic impact statement required under section 8052, subsection 5-A and the fiscal impact note required under section 8063, an agency may, within existing budgeted resources and in instances in which the consideration of costs is permitted, conduct an analysis of the benefits and costs of a proposed rule to evaluate the effects of the rule on the distribution of benefits and costs for specific groups and on the overall economic welfare of the State.

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

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

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

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

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

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

PART C

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

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

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

§13063. Business Ombudsman Program

The director shall ~~be responsible for the implementation of~~ establish and implement pursuant to this section the Business ~~Assistance Referral and Facilitation~~ Ombudsman Program, referred to in this section as "the program," and the director shall serve as the ombudsman for the program. The program is established to: resolve problems encountered by businesses dealing with other state agencies; facilitate responsiveness of State Government to small business needs; report to the commissioner and the Legislature on breakdowns in the economic delivery system, including problems encountered by businesses dealing with state agencies; assist businesses by referring businesses and persons to resources that provide the business services or assistance requested; provide comprehensive permit information and assistance; and serve as a central clearinghouse of information with respect to business assistance programs and services available in the State.

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

A. Respond to written and oral requests for information about business services and assistance programs available throughout the State;

B. Obtain and compile the most current and available information pertaining to business assistance programs and services within the State;

C. Delineate the business assistance programs and services by type of program or service and by agency; and

D. Maintain a list, to be updated annually, of marketing programs of state agencies with a description of each program.

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

A. Resolve problems encountered by ~~business persons~~ businesses with other state agencies and with certified regional and local economic development organizations;

B. Coordinate programs and services for business among agencies and all levels of government;

C. Facilitate responsiveness of State Government to ~~small~~ business needs; and

D. Report to the commissioner and the Legislature any breakdowns in the economic delivery system, including problems encountered by businesses dealing with state agencies.

3. Comprehensive permit information. The ~~director~~ ombudsman shall develop and maintain a program to provide comprehensive information on permits required for

business undertakings, projects and activities and to make that information available to any person. This program must function as follows.

A. ~~Not later than 90 days from April 6, 1992~~ By December 15, 2011, each state agency required to review, approve or grant permits for business undertakings, projects and activities shall report to the office in a form prescribed by the office on each type of review, approval and permit administered by that state agency. Application forms, applicable agency rules and the estimated time period necessary for permit application consideration based on experience and statutory or regulatory requirements must accompany each state agency report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Upon application by the municipal officers of a municipality and upon evidence that the municipality meets all qualifications as determined by departmental rulemaking, the ~~director~~ ombudsman shall appoint the municipality as a centralized permitting agent to provide all permits for retail businesses. Upon evidence that a municipality qualified to provide permits meets the qualifications for conducting the inspection associated with any of those permits as determined by departmental rulemaking, the ~~director~~ ombudsman shall appoint that municipality as an agent to provide that inspection for retail businesses with less than 10,000 square feet of retail space. The ombudsman shall ensure that municipalities appointed as agents for purposes of inspection are qualified and capable of conducting those inspections in a manner that ensures compliance with all applicable public health and safety requirements. Retail businesses shall pay the municipality an additional fee of $4 for each permit included in the consolidated application up to a limit of $40. Municipalities may retain 1/2 of all fees collected for permits requiring inspection. The remaining 1/2 of those permit fees and all fees for permits not requiring inspection must be remitted to the department, which shall remit the fees to the issuing agency. A municipality with a population of less than 4,000 ~~population~~ may contract with an appointed municipality for centralized permitting and inspection services. A ~~retailer~~ retail business is not required to participate in the municipal central permitting program.

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

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

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

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

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

7. Goal and evaluation. It is the goal of the programs established in subsections 5 and 6 for retail businesses to obtain permits more quickly at no additional cost to the taxpayers of the State. The ~~director~~ ombudsman shall devise and implement a program of data collection and analysis that allows a determination as to whether these goals have been met. This program must include the collection of benchmark data before the initiation of the programs and an enumeration of the number of municipalities

participating in the program. ~~In analyzing costs, the director shall amortize the costs of computers or computer programs necessary for the program.~~ By January ~~1, 1994~~ 15, 2012 and every 2 years after that date, the ~~director~~ ombudsman shall prepare and submit a report to the joint standing committee of the Legislature having jurisdiction over economic development matters ~~based on this data and a recommendation~~ regarding the effectiveness of the program and any recommendations as to why the retail business program and the municipal centralized permitting program should not be expanded to other sizes or types of businesses, to other issuing agencies and to smaller municipalities. The first report must contain an assessment of the levels of willingness of municipalities to participate in the programs established by this section.

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

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

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.

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

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.

PART E

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

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

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

§8063-B. Identification of primary source of information

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

PART F

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

Sec. F-2. Rules; beneficial reuse. The Board of Environmental Protection shall adopt or amend rules as necessary that, consistent with rules adopted by the United States Environmental Protection Agency governing the transfer, management, reclamation and reuse of hazardous and solid waste, allow and encourage the beneficial reuse of hazardous and solid wastes consistent with the protection of public health and the environment in order to preserve resources, conserve energy and reduce the need to dispose of such wastes. Rules adopted under this section are major substantive rules pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

PART G

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

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

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

B. The term does not include:

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

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

(3) Decisions issued in adjudicatory proceedings; or

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

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

PART H

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

§341-B. Purpose of the board

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

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

1. Appointments. The board consists of ~~10~~ 7 members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over natural resource matters and to confirmation by the Legislature.

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

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

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

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

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

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

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

~~A. Involves a policy, rule or law that the board has not previously interpreted;~~

~~B. Involves important policy questions that the board has not resolved;~~

~~C. Involves important policy questions or interpretations of a rule or law that require reexamination; or~~

~~D. Has generated substantial public interest.~~

E. Will have an environmental or economic impact in more than one municipality, territory or county;

F. Involves an activity not previously permitted or licensed in the State;

G. Is likely to come under significant public scrutiny; and

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

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

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

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

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

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

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

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

3. Modification or corrective action. At the request of the commissioner and after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the board may modify in whole or in part any license, or may issue an order

prescribing necessary corrective action, whenever the board finds that any of the criteria in section 342, subsection 11-B have been met.

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

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

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

D. License or permit decisions regarding an expedited wind energy development as defined in Title 35-A, section 3451, subsection 4 or a general permit pursuant to section 480-HH or section 636-A. In reviewing an appeal of a license or permit decision by the commissioner under this paragraph, the board shall base its decision on the administrative record of the department, including the record of any adjudicatory hearing held by the department, and any supplemental information allowed by the board ~~using the standards contained in subsection 5~~ for supplementation of the record. The board may remand the decision to the department for further proceedings if appropriate. The chair of the Public Utilities Commission or the chair's designee serves as a nonvoting member of the board and is entitled to fully participate but is not required to attend hearings when the board considers an appeal pursuant to this paragraph. The chair's participation on the board pursuant to this paragraph does not affect the ability of the Public Utilities Commission to submit information to the department for inclusion in the record of any proceeding before the department.

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

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

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

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

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

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

§341-E. Board meetings

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

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

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

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

§341-H. Departmental rulemaking

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

1. Rule-making authority of the board. Notwithstanding any other provision of this Title, and except as provided in this subsection, the board shall adopt, amend or repeal only those rules of the department designated as major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A. The board shall also adopt, amend and repeal routine technical rules as necessary for the conduct of the department's business, including the processing of applications, the conduct of hearings and other administrative matters.

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

3. Duties of department. The department shall:

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

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

C. Notwithstanding Title 5, chapter 375, subchapter 2 or 2-A, the department shall accept and consider additional public comment on a proposed rule following the close of the formal rule-making comment period at a meeting that is not a public hearing only if the additional public comment is directly related to comments

received during the formal rule-making comment period or is in response to changes to the proposed rule. Public notice of the meeting must comply with Title 1, section 406 and must state that the department will accept additional public comment on the proposed rule at that meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The commissioner may not request the board to assume jurisdiction of an application for any permit or other approval required for an expedited wind energy development, as defined in Title 35-A, section 3451, subsection 4, a certification pursuant to Title 35-A, section 3456 or a general permit pursuant to section 480-HH or section 636-A. Except as provided in subparagraph (2), the commissioner shall issue a decision on an application for an expedited wind energy development, an offshore wind power project or a hydropower project, as defined in section 632, subsection 3, that uses tidal action as a source of electrical or mechanical power within 185 days of the date on which the department accepts the application as complete pursuant to this section or within 270 days of the department's acceptance of the application if the commissioner holds a hearing on the application pursuant to section 345-A, subsection 1-A.

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

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

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

A. Whenever it appears to the commissioner, after investigation, that there is or has been a violation of this Title, of rules adopted under this Title or of the terms or conditions of a license, permit or order issued by the board or the commissioner, the

commissioner may initiate an enforcement action by taking one or more of the following steps:

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

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

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

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

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

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

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

3. License fee. The license fee must be paid at the time of filing the application. Failure to pay the license fee at the time of filing results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner shall refund the license fee if the board or commissioner denies the application or if the application is withdrawn by the applicant. Notwithstanding the provisions of this subsection, the license fee for a subdivision must be paid prior to the issuance of the license.

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

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

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

C. Notwithstanding Title 5, section 10051, the board may modify~~, revoke or suspend~~ a license and the commissioner may revoke or suspend a license when the board or

the commissioner finds that any of the conditions specified in section ~~341-D~~ 342, subsection ~~3~~ 11-B exist or upon an application for transfer of a license.

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

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

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

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

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

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

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.

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;

2. Clarity. Whether the language of the rule has retained its clarity and use of plain and clear English as required by Title 5, section 8061, continues to comply with the uniform drafting standards set forth in the drafting manual developed by the Secretary of State under Title 5, section 8056-A or whether the rule could be made less complex or more understandable to the general public;

3. Reasonableness. Whether the rule has been reasonably and consistently applied with respect to the public or particular persons and whether less costly or more limited regulatory methods of achieving the original purposes of the rule have become available; and

4. Appropriate categorization. Whether the rule should be categorized as a major substantive rule or a routine technical rule, as those terms are defined in Title 5, chapter 375.

§974. Report to the committee of jurisdiction

An agency directed to undertake a retrospective review of one or more of its rules in a first regular session of the Legislature pursuant to section 972 shall submit a written report to the committee of jurisdiction on or before February 14th of the second regular session of that Legislature. The report must address each of the criteria listed in section 973 for each rule reviewed by the agency and identify ways in which the agency proposes to amend the rule, if any, and recommend whether the legislative authority for each rule should be retained, repealed or modified.

PART M

Sec. M-1. Application for designation as a state regional center. The Commissioner of Economic and Community Development shall work collaboratively and in partnership with the Finance Authority of Maine, the Maine International Trade Center and representatives of private sector business interests in applying to the United States Department of Homeland Security, United States Citizenship and Immigration Service for the designation of the State as a state regional center for the purposes of reviewing and approving foreign investment projects under the Immigrant Investor Pilot Program enacted in federal law under Public Law 102-395, Section 610, 8 United States Code, Section 1153(b)(5). The purpose of the pilot program is to encourage immigration through the 5th employment-based preference, EB-5, immigrant visa category by immigrants seeking to enter the United States to invest from $500,000 to $1,000,000 in commercial enterprises that will create at least 10 full-time jobs.

Sec. M-2. Report. The Commissioner of Economic and Community Development shall report by January 15, 2012 to the Joint Standing Committee on Labor, Commerce, Research and Economic Development on the progress of the State's application process required under section 1. That report must include any statutory changes recommended to facilitate that application or to administer a federally designated regional center in the State.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved, except that those sections of this Act that amend the Maine Revised Statutes, Title 38, section 341-C take effect on September 16, 2011.

In House of Representatives, ... 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, ... 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor