JOINT SELECT COMMITTEE ON REGULATORY FAIRNESS AND REFORM
Proposed Committee Amendment to LD 1
An Act to Ensure Regulatory Fairness and Reform

This amendment to LD 1, "*An Act to Ensure Regulatory Fairness and Reform*", was prepared by the Joint Select Committee on Regulatory Fairness and Reform for the purpose of soliciting public input on a set of proposed recommendations at a public hearing on Thursday, April 14, 2011 at 1:00 PM in Room 220 of the Cross Building in Augusta. The committee has taken no final votes on these recommendations at this point. Following the public hearing, the committee will hold one or more work sessions to consider testimony received and to take final votes on one or more amendments.

A link to this proposed amendment can be found on-line at
www.maine.gov/legis

If you have questions, please contact Darlene Simoneau at 287-1679 or by email at darlene.simoneau@legislature.maine.gov.

Amend the bill by striking everything after the enacting clause and before the Summary and inserting the following:

Part A
Environmental Audits

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

SUBCHAPTER 1-A

INCENTIVES FOR SELF-POLICING: DISCOVERY, DISCLOSURE, CORRECTION AND PREVENTION OF VIOLATIONS

§349-M. Environmental audit program.

This subchapter establishes the minimum elements of a voluntary environmental audit program and compliance management system that are intended to enhance 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 more comprehensive environmental management system.

1. Definitions. For the purposes of this Article, the following terms have the following meanings:

A. ''Environmental Audit Program'' means a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements;

B. "Environmental requirements" means any laws or rules administered by the department.

C. ''Compliance Management System'' means the regulated entity's documented systematic efforts, appropriate to the size and nature of its business, to prevent, detect and correct violations through all of the following:

(1) Compliance policies, standards and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits, enforceable agreements and other sources of authority for environmental requirements;

(2) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

(3) Mechanisms for systematically assuring that compliance policies, standards and procedures 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 to report violations of environmental requirements without fear of retaliation;

(4) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

(5) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

(6) 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.

D. ''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;

E. ''Gravity-based penalties'' means that portion of a penalty over and above the economic benefit, *i.e.*, the punitive portion of the penalty, rather than that portion representing a defendant's economic gain from noncompliance; and

F. ''Regulated entity'' means any entity regulated by the department.

§349-N. Incentives for self-policing

Subject to section §349-Q, and notwithstanding any other applicable law relating to penalties, the department may adjust or mitigate penalties in accordance with this section.

1. No gravity-based penalties. If the department determines that the 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 penalties for the violation.

2. Reduction of Gravity-Based Penalties by 75%. If the department determines that the regulated entity satisfies all of the conditions of 349-O, subsections 2 through 9, the department may only impose in any administrative proceeding, or seek to impose in any civil action, up to 25% of any gravity-based penalty for the violation.

3. No Recommendation for Criminal Prosecution. If the department determines that the regulated entity satisfies the conditions of section 349-O, subsections 2 through 9, the department will recommend that no criminal charges be brought against the regulated entity, as long as the department determines that the violation is not part of a pattern or practice that demonstrates or involves:

(1) A prevalent management philosophy or practice that conceals or condones environmental violations; or

(2) High-level corporate officials' or managers' conscious involvement in, or willful blindness to, violations of State or Federal environmental law.

4. No Routine Request for Environmental Audit Reports. The department will not request an environmental audit report in routine inspections. If the department has independent reason to believe that a violation has occurred, however, the department may seek any information relevant to identifying violations or determining liability or extent of harm.

§349-O. Conditions of Discovery

The incentives for self-policing established in section 349-N apply to violations discovered by a regulated entity only if:

1. Systematic Discovery. The violation was discovered through:

(1) An environmental audit program; or

(2) A compliance management system reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity

must notify the department when it has a compliance management system in place and must make that available to the department upon request. The regulated entity must provide accurate and complete documentation to the department as to how its compliance management system meets the criteria for due diligence outlined in section 349-M 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 voluntarily. Incentives for self-policing 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:

(1) Emissions violations detected through a continuous emissions monitor, or alternative monitor established in a permit, where any such monitoring is required;

(2) Violations of National Pollutant Discharge Elimination System discharge limits detected through required sampling or monitoring;

(3) 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; or

(4) 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 entity discovers that a violation has, or may have, occurred begins when a person authorized to speak on behalf of the facility has an objectively reasonable basis for believing that a violation has, or may have, occurred. Persons authorized to speak on behalf of a facility must be listed in the management audit by position title. The department's response to a violation disclosed under this subsection must be made in writing to the regulated entity within 3 months of the disclosure of the violation;

4. Discovery and Disclosure Independent of Government or Third-Party Plaintiff. The regulated entity discovers and discloses the potential violation to the department prior to:

(1) The commencement of an inspection or investigation related to the violation. Where the department determines that the facility did not know that it was under investigation, the department determines that the entity is otherwise acting in

good faith, the department may determine that the requirements of this paragraph are met;

(2) Notice of a citizen suit related to the violation;

(3) The filing of a complaint by a third party related to the violation; or

(4) The reporting of the violation to the department, or other state agency, by a ''whistleblower'' employee, rather than by one authorized to speak on behalf of the 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 or remediate is otherwise prescribed in statute, rule of order, certifies in writing that the violation has been corrected, and takes appropriate measures as determined by 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 such 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 must so notify the department in writing before the 60-day period has passed. Where appropriate, 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 Article, particularly where 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. Such steps may include improvements to its environmental auditing or compliance management system;

7. No Repeat Violations. The specific violation, or a closely related violation, has not occurred previously within the past three years at the same facility, and has not occurred within the past five years as part of a pattern at multiple facilities owned or operated by the same entity. For the purposes of this subsection, a repeat or closely related violation is any violation previously identified in a judicial or administrative order, consent agreement or order, complaint, letter of warning, or notice of violation, conviction or plea agreement that occurs under equipment operating conditions substantially unchanged since the previous violation.

8. Other Violations Excluded. Incentives for self-policing do not apply to violations which resulted in serious actual harm, or may have presented an imminent and substantial endangerment, to human health or the environment, or which violate the specific terms of any judicial or administrative order, or consent agreement, or is a knowing, intentional or reckless violation; and

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

§349-P. Economic Benefit.

The department may forgive the entire penalty, including any penalties for economic benefit gained as a result of noncompliance, for a regulated entity that meets all the requirements of subsection 349-O and, 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.

Nothing in this subchapter limits any other authority of the department to adjust or otherwise mitigate any penalty imposed or sought by the department for a violation, provided that the violator does not receive an incentive under this subchapter for the same violation.

§349-R. Rules.

The Board of Environmental Protection may adopt rules to implement the environmental audit program established in Title 38, chapter 2, sub-chapter 1-A. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

Part B
Benefit-cost analysis

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 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 benefit-cost analysis. A benefit-cost analysis conducted under this section should address, at a minimum, each of the following issues:

A. Specification of the baseline condition, 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 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 policy change 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 benefit-cost analysis under this section, the agency must determine that sufficient staff expertise and budgeted resources exist within the agency to complete the analysis. Benefit-cost analyses completed under this section must be included by the agency with a copy of the proposed rule when responding to a request under section 8053, subsection 3-A and, when conducted on a provisionally adopted major substantive rule, included with the materials submitted to the Executive Director of the Legislative Council under section 8072, subsection 2. A benefit cost analysis conducted under this section is not subject to judicial review under section 8058

Part C
Ombudsman

Sec. C-1. 5 MRSA, §13062, sub-§ 2 (B) is amended to read:

2. Business assistance. Business assistance services shall be provided consistent with this subsection.

A. The office shall provide business assistance services that are convenient to businesses throughout the State. The office shall use certified local and regional economic development organizations, educational institutions or certified private sector firms to implement this subsection.

(1) Business assistance services shall include managerial and technical assistance and assistance with applications for loans and the completion of applications for licenses and permits from regulatory agencies.

(2) The office, in conjunction with local and regional organizations and other institutions and firms in the private sector with marketing expertise, may conduct seminars on marketing and marketing-related topics for Maine businesses.

B. In accordance with section 13063, the office shall implement a business ombudsman program designed to do the following: resolve problems encountered by business persons with other state agencies; facilitate responsiveness of State Government to small business needs; and report to the commissioner and the

Legislature on breakdowns in the economic delivery system, including problems encountered by businesses dealing with state agencies. The office shall also implement a 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 is amended to read:

5 §13063. ~~BUSINESS ASSISTANCE REFERRAL AND FACILITATION PROGRAM~~ BUSINESS OMBUDSMAN PROGRAM

The director shall be responsible for the implementation of ~~the Business Assistance Referral and Facilitation Program.~~ Business 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 perform the following duties: resolve problems encountered by business persons 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 the proper agencies designed to provide the business services or assistance requested; provide comprehensive permit information and assistance; and to serve as a central clearing house 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 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 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 facilitation service.~~ 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 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~~ 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~~ 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 issued by the Department of Environmental Protection, the Department of Marine Resources and the Maine Land Use Regulation Commission. 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.

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 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. 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 less than 4,000 population may contract with an appointed municipality for centralized permitting and inspection services. A retailer 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~~ 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 business ombudsman 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 business ombudsman program.

Sec. C-3. Report. No later than February 15, 2012, the Ombudsman for the Business Ombudsman Program within the Office of Business Development, Department of Economic and Community Development, shall provide a report 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 to businesses within the business ombudsman program, as well as the program's success with implementing the retail business and municipal centralized permitting programs required pursuant to Title 5 MRSA section 13063. The joint standing committee of the Legislature having jurisdiction over economic development matters may report out a bill relating to the permitting programs within the business ombudsman program.

Sec. C-4. Consolidation of eating and lodging licenses. The purpose of this section is to propose including the consolidation of licenses for eating and lodging places, as defined in Title 22, section 2491, subsection 6, into the consolidated permit procedures administered under the retail business permitting program established in Title 5, section

13063, subsection 5.

Part D
Special Advocate

Sec. D-1. 5 MRSA, §57 is repealed.

Sec. D-2. 5 MRSA, chapter 5, subchapter 1 is enacted to read.

Subchapter 1
Special Advocate

§90-N. Bureau established

The Bureau of the Special Advocate is established within the Office 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, the following terms have the following meanings:

1. Agency enforcement action. "Agency enforcement action" means an enforcement action initiated by a state agency against a small business which, if taken, would likely result in significant economic hardship for a small business as the result of:

A. Assessment of monetary penalties; or

B. Suspension or revocation of a license held by a small business;

2. Significant economic hardship. "Significant economic hardship" means a hardship created by a monetary penalty or license suspension or revocation imposed by an agency enforcement action that will result in the:

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

B. The termination of employees of that business;

3. Small business. "Small business" means a business having 50 or fewer employees in the state;

4. Regulatory impact notice. "Regulatory impact notice" means a written notice from the Secretary of State to the Governor informing the Governor that a state agency has taken an enforcement action that is likely to create significant economic hardship for

a small business, when a less harmful means of effective enforcement action was possible.

§ 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 and must be an attorney licensed to practice in this state.

§ 90-Q. Small business requests for assistance.

A small business may request the assistance of the Special Advocate in any proposed or initiated agency enforcement action affecting 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 offering any assistance, the Special Advocate must provide a written disclaimer to the small business stating that the Special Advocate is not acting as an attorney representing the small business and that no attorney-client relationship 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 proposed rules as provided in chapter 375, testifying on legislation affecting the interests of small businesses, consulting with agencies having enforcement authority over business matters, and actively and publicly promoting the services provided by the Special Advocate; and

2. Advocate on behalf of an aggrieved small business. Upon receipt of a request for assistance under section 90-Q, the Special Advocate may:

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

B. After reviewing the complaint, discussing the complaint with the small business and the appropriate state agency, 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 and the small business and

participation in related regulatory proceedings in a manner allowed by applicable laws;

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 business, when a less harmful 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 a state agency has taken an enforcement action that is likely to create significant economic hardship for a small business, when a less harmful means of effective enforcement action 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 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 action will affect the interests of small businesses and a description of how a less harmful enforcement action, when permitted by law, may have relieved the small business of the significant economic impact expected to result from the agency action. The Secretary of State shall provide a copy of the notice to the agency that took the agency action.

§90-T. Regulatory Fairness Board

The Regulatory Fairness Board, referred to in this section as "the board," is established within the office 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 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 must represent a business with fewer than 50 employees and one of whom must represent 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. No member other than the Secretary of State may serve more than 3 consecutive terms.

3. Quorum. The attendance of three appointed members of the board constitutes a quorum for the purpose of conducting the board's business.

4. Duties of board. The board shall:

A. Meet at least 3 times a year to review requests for assistance submitted to the Special Advocate;

B. Review the status of requests for assistance filed with the Special Advocate and regulatory impact notices filed by the Secretary of State;

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 enforcement actions against businesses by regulatory agencies of the state. The report also may also include recommendations for statutory changes that will bring more clarity, consistency and transparency in regulations affecting the small business community.

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

6. Staff. The Special Advocate shall staff the board.

Sec. D-3. Transition provisions.

1. Members of the Regulatory Fairness Board. The terms of members appointed to the Regulatory Fairness Board under former 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 under that section must be staggered as follows:

A. The member who is appointed by the President of the Senate shall serve an initial term of two years;

B. The member appointed by the Speaker of the House shall serve an initial term of two years; and

C. The first members appointed by the Governor shall serve an initial term of one year; and

D. The second member appointed by the Governor shall serve an initial term of three years.

2. Special Advocate. The Secretary of State shall use a vacant Deputy Secretary of State position when hiring a Special Advocate under Title 5 MRSA, chapter 5, subchapter 1.

Part E
Primary Source of Information

Sec. E-1. 5 MRSA, §8057-A, sub-§4 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, a citation to the primary source of information relied upon by the agency in adopting the rule. A citation to a primary source of information is not subject to judicial review.

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

§8063-A. Identification of primary source of information

Every rule proposed by an agency, except for emergency rules, must cite the primary source of information relied upon by the agency in developing the proposed rule. The agency must include that information with a copy of the proposed rule when responding to a request under section 8053, subsection 3-A. A citation to a primary source of information is not subject to judicial review.

Part F
Beneficial Reuse of Hazardous and Solid Wastes

Sec. F-1. Rules. The Board of Environmental Protection shall adopt rules to 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. In developing these rules, the department shall amend existing rules as necessary and adopt any such new rules in such a manner that makes those rules consistent with, at a minimum, federal regulations governing the transfer, management, reclamation and reuse of hazardous and solid waste. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter

375, subchapter II-A which must be provisionally adopted by December 31, 2011 and submitted to the Legislature for review during the Second Regular Session of the 125th Legislature.

Part G
Enforceability of Agency Guidelines

Sec. G-1. 5 MRSA §8002, sub-§ 9 is amended to read

9. Rule.

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 issued under subchapter III;

(3) Decisions issued in adjudicatory proceedings; or

(4) Any form, instruction or explanatory statement of policy which in itself is not judicially enforceable, and which 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
Modifications to the Board of Environmental Protection

Sec. H-1. 38 MRSA, §341-B 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~~ deciding 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 and 2 are 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.

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-3. 38 MRSA, §341-D is amended to read.

§341-D. Board responsibilities and duties

The board is charged with the following duties and responsibilities.

1. Rulemaking.

1-A. Rulemaking.

1-B. Rulemaking. Subject to the Maine Administrative Procedure Act, the board shall adopt, amend or repeal ~~reasonable~~ rules and emergency rules necessary for the interpretation, implementation and enforcement of any provision of law that the department is charged with administering. Except as otherwise provided in this chapter, the board shall adopt, amend or repeal those rules of the department designated by the Legislature as major substantive rules under Title 5, chapter 375, subchapter 2-A. All other rules of the department shall be adopted by the commissioner under section 342, subsection 9. The board shall also adopt, amend and repeal rules as necessary for the conduct of its business.

The department shall identify in its regulatory agenda, when feasible, a proposed rule or provision of a proposed rule that is anticipated to be more stringent than the federal standard, if an applicable federal standard exists.

During the consideration of any proposed rule by the board, when feasible, and using information available to it, the department shall 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.

Notwithstanding Title 5, chapter 375, subchapter II, the board 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 state that the board will accept additional public comment on the proposed rule at that meeting.

1-C. 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.

~~This subsection takes effect January 1, 1998.~~

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 any three of the following four 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.~~

A. Has a regional environmental or economic impact;

B. Involves an activity not previously permitted or licensed in the state;

C. Is likely to come under significant public scrutiny; or

D. Affects more than one municipality. territory or county.

The board shall also decide each application for approval of permits and licenses that are 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 at least three of the four ~~the~~ criteria of this subsection have been met.

The board may vote to assume jurisdiction of an application if it finds that at least three of the four ~~one or more~~ of the criteria in 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 close of the hearing record.

3. Modification~~, revocation or suspension~~ or corrective action. After written notice and opportunity for a hearing pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, the board may, upon the recommendation of the commissioner, modify in whole or in part any license, or may issue an order prescribing necessary corrective action, ~~or may act in accordance with the Maine Administrative Procedure Act to revoke or suspend a license,~~ whenever the ~~board~~ commissioner determines under section 342, subsection 11-B, that there has been a change in any condition or circumstance that requires ~~revocation, suspension or~~ corrective action or a temporary or permanent modification of the terms of the license.

~~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, suspension or a temporary or permanent modification of the terms of the license;~~

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

~~G. 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, the term "license" includes any license, permit, order, approval or certification issued by the department and the term "licensee" means the holder of the license.

4. Appeal or review. The board shall review, may hold a hearing at its discretion on and may affirm, amend, reverse or remand to the commissioner for further proceedings any of the following:

A. Final license or permit decisions made by the commissioner when a person aggrieved by a decision of the commissioner appeals that decision to the board within 30 days of the filing of the decision with the board staff. The board staff shall give written notice to persons that have asked to be notified of the decision. The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that:

(1) An interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time; or

(2) The evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.

The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board's review of the record, any supplemental evidence admitted by the board and any hearing held by the board;

~~B. License or permit decisions made by the commissioner that the board votes to review within 30 days of the next regularly scheduled board meeting following written notification to the board of the commissioner's decision. Except as provided in paragraph D, the procedures for review are the same as provided under paragraph A;~~

~~C.~~ B. License or permit decisions appealed to the board under another law. Unless the law provides otherwise, the standard of review is the same as provided under paragraph A; and

~~D.~~ C. 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.

~~**5. Requests for reconsideration.** A person aggrieved by a decision of the board on a permit or license application may petition the board once to reconsider that decision, except that a person may not petition the board to reconsider a decision that is an appeal or review of a final license or permit decision made by the commissioner under subsection 4, paragraph A. A petition for reconsideration must be made in writing within 30 days after the board's decision and may be made for:~~

~~A. Correction of any part of the decision that the petitioner believes to be in error and not intended by the board;~~

~~B. An opportunity to present new or additional evidence to secure reconsideration of any part of the decision; or~~

~~C. A challenge to any fact of which official notice was taken.~~

~~The petition must set forth in detail the findings, conclusions or conditions to which the petitioner objects, the basis of the objections, the nature of any new or additional evidence to be offered and the nature of the relief requested. Within 30 days of receiving a complete reconsideration petition, the board shall decide whether to reconsider its decision. The board may hold a hearing within 30 days of its decision to reconsider the decision.~~

~~In considering the petition, the board may grant the petition in full or in part, or dismiss the petition. The board shall provide reasonable notice to interested persons.~~

~~The board may allow the record to be supplemented when it finds that the evidence offered is relevant and material and that an interested party seeking to supplement the record has shown due diligence in bringing the evidence to the licensing process at the earliest possible time or the evidence is newly discovered and could not, by the exercise of diligence, have been discovered in time to be presented earlier in the licensing process.~~

~~The running of the time for appeal under section 346, subsection 1, is terminated by a timely petition for reconsideration filed under this subsection. The full time for appeal commences and is computed from the date of the final board action dismissing the petition or another final board action as a result of the petition.~~

~~The filing of a petition for reconsideration is not an administrative or judicial prerequisite for the filing of an appeal under section 346, subsection 1~~.

6. Enforcement. The board shall:

~~A. Advise the commissioner on enforcement priorities and activities;~~

~~B. Advise the commissioner on the adequacy of penalties and enforcement activities;~~

~~C. Approve administrative consent agreements pursuant to section 347-A, subsection 1; and~~

D. Hear appeals of emergency orders pursuant to section 347-A, subsection 3.

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.

8. Other duties. The board shall carry out other duties as required by law.

Sec. H-4. 38 MRSA, §341-E, sub-§1 is amended to read.

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~~.

Sec. 5. 38 MRSA, §342, sub-§§ 9 and 11-A are amended to read.

9. Rules. The commissioner may adopt rules as are necessary for the interpretation, implementation or enforcement of any provision of law that the department is charged with administering that are not designated by the Legislature as major substantive rules and shall submit to the board new or amended major substantive rules for its adoption.

11-A. Recommendations and assistance to board. The commissioner shall make recommendations to the board regarding proposed major substantive rules; permit and license applications for which the board has jurisdiction; modification or corrective action on licenses, ~~revocation or suspension of 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-6. 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 the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, the commissioner may 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, the term "license" includes any license, permit, order, approval or certification issued by the department and the term "licensee" means the holder of the license.

Sec. H-7. 38 MRSA, §347-A, sub-§§ 1 and 4 are amended to read

1. General procedures. This subsection sets forth procedures for enforcement actions.

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.

B. Before initiating a civil enforcement action pursuant to paragraph A, the commissioner shall issue a notice of violation to the person or persons the commissioner considers likely to be responsible for the alleged violation or violations. The notice of violation must describe the alleged violation or violations,

to the extent then known by the commissioner; cite the applicable law, rule and term or condition of the license, permit or order alleged to have been violated; and provide time periods for the alleged violator to take necessary corrective action and to respond to the notice. For violations the commissioner finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances. The commissioner is not required to issue a notice of violation before issuing an emergency order pursuant to subsection 3 or other applicable provision of this Title; nor is the commissioner required to issue a notice of violation before referring an alleged violation to the Attorney General for criminal prosecution or in a matter requiring immediate enforcement action.

4. Administrative consent agreements. Following issuance of a notice of violation pursuant to subsection 1 and after receipt of the alleged violator's response to that notice or expiration of the time period specified in the notice for a response, in situations determined by the commissioner appropriate for further enforcement action, the commissioner may send a proposed administrative consent agreement to the alleged violator or violators.

A. Except as otherwise expressly agreed to by the Attorney General, all proposed administrative consent agreements must be reviewed and approved by the Department of the Attorney General before being sent to the alleged violator.

B. All proposed administrative consent agreements sent to the alleged violator must be accompanied by written correspondence from the department, in language reasonably understandable to a citizen, explaining the alleged violator's rights and responsibilities with respect to the proposed administrative consent agreement. The correspondence must include an explanation of the factors considered by the commissioner in determining the proposed civil penalty, a statement indicating that the administrative consent agreement process is a voluntary mechanism for resolving enforcement matters without the need for litigation and an explanation of the department's procedures for handling administrative consent agreements. The correspondence must also specify a reasonable time period for the alleged violator to respond to the proposed administrative consent agreement and offer the opportunity for a meeting with department staff to discuss the proposed agreement. Consent agreements shall, to the greatest extent possible, clearly set forth all the specific requirements or conditions with which the alleged violator must comply.

C. After a proposed administrative consent agreement has been sent to the alleged violator, the commissioner may revise and resubmit the agreement if further circumstances become known to the commissioner, including information provided by the alleged violator, that justify a revision.

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.~~

E. When the department and the alleged violator can not agree to the terms of a consent agreement and the department elects to bring an enforcement action in District Court pursuant to section 342, subsection 7, the District Court shall refer the parties to mediation if either party requests mediation at or before the time the alleged violator appears to answer the department's complaint. The parties must meet with a mediator appointed by the Court Alternative Dispute Resolution Service created in Title 4, section 18-B at least once and try in good faith to reach an agreement. After the first meeting, mediation must end at the request of either party. If the parties have been referred to mediation, the action may not be removed to Superior Court until after mediation has occurred.

Sec. 8. Transition provisions. [PLACEHOLDER] Transition provisions will be needed to ensure the orderly transition of the board from 10 to 7 members and of any on-going rulemaking, licensing or permitting activities and appeals, and to clarify, where necessary, any specific instances in law in which any existing general grant of rulemaking authority is to be done by the Board of Environmental Protection or by the Commissioner of the Department of Environmental Protection.

Part I
Maine Uniform Accounting Practices for Community Agencies

Sec. I-1 Department of Health and Human Services to amend rules. The Department of Health and Human Services shall place in abeyance the rules adopted on January 1, 2011 pursuant to Maine Rules Section 10-144 Chapter 30 Maine Uniform Accounting and Auditing Practices for Community Agencies. The Department shall revert to the Chapter 30 Rule language that was in effect on December 31, 2010. The Commissioner shall convene the Advisory Committee to the Commissioner established in Title 5 Chapter 148-C. In cooperation with the Advisory Committee, the Commissioner shall adopt amended Chapter 30 Rules. In adopting those rules, the Commissioner shall seek to avoid duplication of federal standards and to preserve the authority of individual agency boards. The Commissioner shall resume the Advisory Committee annually and provide written reports to the Legislature as required by Title 5 Chapter 148-C.

Rules adopted under this section are, for their initial adoption, major substantive routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Subsequent revisions to these rules are routine technical rules pursuant to Title 5, chapter 375, subchapter II.

Part J
Municipal Fire Code Permitting

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 one 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
Municipal Heath Inspection Authority for Eating Establishments

Sec. K-1. Health inspections; elimination of duplicate state and local inspection. This section proposes to eliminate duplication in the licensing and health inspections of eating establishments by removing state licensing and health inspection requirements for eating establishments in municipalities for which the authority to conduct health inspections has been delegated by the Department of Health and Human Services under Title 22, chapter 562.

Part L
Agency Review of Rules

Sec. L-1. This section proposes to allow committees of the Legislature to direct agencies within their jurisdiction, during the First Regular Session of any Legislature, to review specific rules adopted by those agencies and to report to the legislative committee during the subsequent Second Regular Session on its review of those rules. When directed by a committee to review selected rules, the agency shall review those rules for relevancy, clarity and reasonableness, including whether the rule is appropriately designated as either a major substantive rule or a routine technical rule, and shall recommend to the committee whether the rule should be retained, repealed or modified. Following its review of agency recommendations on those rules, the legislative committee is authorized to report out a bill to the Second Regular Session on any matter related to the agency's review of that rule.

Part M
EB-5 Regional Center

Sec. M-1. Application for designation as a state regional center. The Commissioner of the Department of Economic and Community Development shall apply to the United States Citizenship and Immigration Service for designation 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 Section 610 of Public Law 102-395. The purpose of the Pilot Program is to encourage immigration through the fifth 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 a 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, Research and Economic Development on the status of the state application required under section M-1. That report shall include any statutory recommendations necessary to facilitate the application or to administer a federally designated Regional Center in the state.

SUMMARY OF AMENDMENT

This amendment proposes the following:

Part A Summary

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 self-policing protocols that include an environmental audit program or a compliance management system.

Part B Summary

Part B authorizes agencies to conduct a benefit-cost 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 benefit-cost analysis is not subject to judicial review.

Part C Summary

Part C renames the business assistance and referral program currently within the 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, and serving as a central clearing house of business assistance programs and services available in the State.

Part C also requires the ombudsman to:

A. 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;

B. 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

C. 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 C also proposes to include the consolidation of licenses for eating and lodging places, as defined in Title 22, section 2491, subsection 6, into the consolidated permit procedures administered under the retail business permitting program established in Title 5, section 13063, subsection 5.

Part D Summary

Part D creates a Bureau of the Special Advocate within the Office 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 potential agency enforcement actions that may result in the closure of the business or the termination of employees, either through monetary penalties or suspension or revocation of a business license. The Special Advocate may assist the small business during the regulatory process in a manner consistent with law. 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 business, when a less harmful means of effective enforcement is possible, the Special Advocate may recommend to the Secretary of State that the Secretary issue a regulatory impact notice to the Governor, asking that the Governor take action, as appropriate and in a manner consistent with all applicable laws, to address the issues raised by that agency enforcement action.

Part E Summary

Part E requires agencies to include a citation to the primary source of information relied upon by an agency when proposing or adopting rules, except for emergency rules. A citation to a primary source of information is not subject to judicial review.

Part F Summary

Part F directs the Board of Environmental Protection to provisionally adopt major substantive rules by December 31, 2011 to 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. Those provisionally adopted rules must be submitted to the Legislature for review in the Second Regular Session of the 125th Legislature.

Part G Summary

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

Part H Summary

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

1. Reduces the size of the Board of Environmental Protection from 10 members to 7 members and modifies the qualifications of those members to specify that at least 3 members have technical or scientific backgrounds in environmental issues and that no more than 4 members can be residents of the same Congressional District;

2. Limits the board's rulemaking authority, in most instances, to the adoption of major substantive rules or amendments to existing major substantive rules. The Commissioner is authorized to adopt all other rules of the department;

3. Makes the commissioner responsible for the granting of all licenses and permits in accordance with the APA, except the board is responsible for licenses and permits that:

- Involve projects of statewide significance, which is redefined to mean projects that meet at least 3 of the 4 following criteria:
  - Projects that have a regional impact;
  - Projects that involve an activity not previously permitted or licensed in the state;
  - Projects likely to come under significant public scrutiny; or
  - Projects that cross jurisdictional boundaries; and
- Projects in which the applicant and the Commissioner jointly request that the BEP assume jurisdiction;

4. Requires that, prior to holding a hearing on an application over which the Board has assumed jurisdiction, the Board ensures 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 close of the hearing record;

5. Authorizes the commissioner to approve consent agreements;

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

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

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

9. Adds language stating that 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; and

10. Adds a placeholder stating that transition provisions will be needed to ensure the orderly transition of the board and functions within the department, including changes to board membership, on-going rulemaking, licensing or permitting activities and appeals, and to clarify, where necessary, any specific instances in law in which any existing general grant of rulemaking authority is to be done by the Board of Environmental Protection or by the Commissioner of the Department of Environmental Protection

Part I Summary

Part I requires the Department of Health and Human Services to place in abeyance the rules adopted on January 1, 2011 pursuant to the Maine Rules Section 10-144 Chapter 30 Maine Uniform Accounting and Auditing Practices for Community Agencies and to revert to the previous rules. It directs the Commissioner to convene the Advisory Committee to the Commissioner established in Title 5 Chapter 148-C and to adopt amended Chapter 30 Rules in consultation with the Committee. It directs that the new rules seek to avoid duplication of federal standards and preserve the authority of

individual agency boards. Finally, it directs the Commissioner to resume the Advisory Committee's annual written reports to the Legislature. Rules adopted under this section are initially major substantive rules, but subsequent amendments to those rules are routine technical rules.

Part J Summary
Municipal Fire Code Permitting

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

Part K Summary
Municipal Heath Inspection Authority for Eating Establishments

Part K proposes to eliminate duplication in the licensing and health inspections of eating establishments by removing state licensing and health inspection requirements for eating establishments in municipalities for which the authority to conduct health inspections has been delegated by the Department of Health and Human Services under Title 22, chapter 562.

Part L Summary
Agency Review of Rules

Part L proposes to allow committees of the Legislature to direct agencies within their jurisdiction, during the First Regular Session of any Legislature, to review specific rules adopted by that agency and to report to the legislative committee during the subsequent Second Regular Session on its review of those rules. When directed by a committee to review selected rules, the agency shall review those rules for relevancy, clarity and appropriateness, including whether the rule is appropriately designated as either a major substantive rule or a routine technical rule, and shall recommend to the committee whether the rule should be repealed or modified to adequately meet the legislative intent as expressed in the laws authorizing the adoption of those rules. Following its review of agency recommendations on those rules, the legislative committee is authorized to report out a bill to the Second Regular Session on any matter related to the agency's review of that rule.

Part M Summary
EB-5 Regional Center Designation

Part M directs the Commissioner of the Department of Economic and Community Development to the United States Citizenship and Immigration Service for designation 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

Section 610 of Public Law 102-395. The purpose of the Pilot Program is to encourage immigration through the fifth 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 a commercial enterprise that will benefit the economy and create at least 10 full-time jobs.

Part M also directs the Commissioner of Economic and Community Development to report by January 15, 2012 to the Joint Standing Committee on Labor, Research and Economic Development on the status of the state application and to include in that report any statutory recommendations necessary to facilitate the state's application or to effectively administer a federally designated Regional Center in the state.