An Act To Streamline Advocacy for Maine Small Businesses by Relocating the Bureau of the Special Advocate within the Department of the Secretary of State to the Department of Economic and Community Development

Submitted by the Department of Economic and Community Development pursuant to Joint Rule 203.
Reference to the Committee on State and Local Government suggested and ordered printed.

Presented by Representative STETKIS of Canaan.
Cosponsored by Representatives: FARRIN of Norridgewock, PICCHIOTTI of Fairfield.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA c. 5, sub-c. 2, as amended, is repealed.

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

2-G.

Business Regulatory Fairness Expenses Only 5 MRSA §90-T
Board 13063-Y

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

ARTICLE 2-D

SPECIAL ADVOCATE

§13063-S. Bureau established

The Bureau of the Special Advocate, referred to in this article as "the bureau," is established within the department 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.

§13063-T. Definitions

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

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


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

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

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 13063-U.

§13063-U. Special advocate; appointment and qualifications

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

§13063-V. 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 13063-W, 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 article.

§13063-W. Power 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 13063-V, 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 through 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 to 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 commissioner that the commissioner issue a regulatory impact notice to the Governor. If an alternative means of effective enforcement is not possible, the special advocate may consult with department staff and other agency business liaisons to determine whether the agency enforcement action can be conducted in such a manner as to minimize potential damage to the State's economic competitiveness.

§13063-X. Regulatory impact notice

At the recommendation of the special advocate, the commissioner 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 commissioner 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.

§13063-Y. Regulatory Fairness Board

The Regulatory Fairness Board, as established in §12004-I, section 2-G and referred to in this section as "the board," is established within the department 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 commissioner or the commissioner's designee, 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; and

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 commissioner 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 commissioner, 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 2 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 pursuant to section 13063-X by the commissioner; 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 commissioner 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. 4. Transition. Members serving on the Regulatory Fairness Board, established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 2-G, on the effective date of this Act continue to serve for the remainder of the terms for which they were appointed.

SUMMARY

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