

STATE OF MAINE
125TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT SELECT COMMITTEE ON
REGULATORY FAIRNESS AND REFORM**

July 2011

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Joint Select Committee on Regulatory Fairness and Reform

LD 1 An Act To Ensure Regulatory Fairness and Reform

**PUBLIC 304
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
RAYE	OTP-AM	S-87

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes to amend the laws to improve the business climate in the State and encourage job creation and retention and expand opportunities for Maine people. This will be accomplished by ensuring regulatory fairness and reform among departments and agencies of State Government by reviewing aspects of the regulatory process and reforming those processes as necessary to eliminate duplicate or unnecessary regulations and to ensure transparency, fairness, effectiveness and efficiency in the development, adoption, implementation and enforcement of regulatory efforts.

Committee Amendment "A" (S-87)

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

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

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

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

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

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

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municipal centralized permitting programs.

Part D creates the Bureau of the Special Advocate within the Department of the Secretary of State. The bureau is headed by a special advocate who is charged with general advocacy on behalf of small business interests within the state regulatory process and who is authorized to assist specific small businesses in seeking a resolution of proposed or initiated agency enforcement actions that may result in the closure of the 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 an alternative 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. That notice must also be sent to the agency and to the joint standing committee of the Legislature having jurisdiction over that agency.

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

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

Part F requires the Commissioner of Environmental Protection to adopt routine technical rules or amend rules as necessary that, consistent with rules adopted by the United States Environmental Protection Agency, provide that isopropyl alcohol and wood ash are not hazardous waste or solid waste if being used, reused or recycled as effective substitutes for commercial products. Part F also requires the Board of Environmental Protection to adopt major substantive rules or amend rules as necessary that, consistent with rules adopted by the United States Environmental Protection Agency governing the transfer, management, reclamation and reuse of hazardous and solid waste, allow and encourage the beneficial reuse of hazardous and solid wastes, consistent with the protection of public health and the environment, in order to preserve resources, conserve energy and reduce the need to dispose of such wastes.

Part G amends the definition of the word "rule" within the Maine 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 Maine Administrative Procedure Act.

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

1. Reduces the size of the board from 10 members to seven members and modifies the qualifications of those members to specify that at least three members must have technical or scientific backgrounds in environmental issues and that no more than four members may be residents of the same congressional district. Pursuant to the emergency clause included in this legislation, these changes do not take effect until September 16, 2011;
2. Limits the board's rule-making authority, in most instances, to the adoption of major substantive rules or amendments to existing major substantive rules. The Commissioner of Environmental Protection is authorized to adopt all other rules of the department;
3. Makes the commissioner responsible for the granting of all licenses and permits, except that the board is responsible for licenses and permits that either meet at least three of the four criteria for projects of statewide significance or that are projects in which the applicant and the commissioner jointly request that the board assume jurisdiction;

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4. Requires that, prior to holding a hearing on an application over which the board has assumed jurisdiction, the board ensures that the Department of Environmental Protection and any outside agency review staff assisting the department in its review of the application have submitted to the applicant and the board their review comments on the application and any additional information requests pertaining to the application, and that the applicant has had an opportunity to respond to those comments and requests. If additional information needs arise during the hearing, the board shall afford the applicant a reasonable opportunity to respond to those information requests prior to the close of the hearing record;
5. Authorizes the commissioner to approve consent agreements rather than the board;
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 ability for interested parties to request that the board assume jurisdiction of an application;
9. 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;
10. Adds language stating that if a rule adopted by the department is the subject of a request for legislative review of a rule under the Maine Revised Statutes, 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
11. Includes transition language to provide for the orderly transition of the changes to the board and for procedures pending before the department on the effective date of this legislation. To allow the current board members time to complete work currently before the board, the transition provisions also provide for a delayed effective date in the reduction in the size of the board and to the eligibility criteria for board members to September 16, 2011 and extends the terms of the members whose terms would otherwise expire prior to September 16, 2011 to September 16, 2011.

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

Part J 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 directs the Secretary of State to convene a working group consisting of representatives of state agencies, small businesses recommended by the Maine chapter of the National Federation of Independent Businesses, other private businesses and other interested parties to examine opportunities for reducing the paperwork associated with the filing of forms with the office of the Secretary of State and to report the findings of the working group by

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February 1, 2012 to the Joint Standing Committee on State and Local Government.

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

Part M directs the Commissioner of Economic and Community Development to work collaboratively and in partnership with the Finance Authority of Maine, the Maine International Trade Center and representatives of private sector business interests in applying to the United States Department of Homeland Security, United States Citizenship and Immigration Service for the designation of the State as a state regional center for the purposes of reviewing and approving foreign investment projects under the Immigrant Investor Pilot Program enacted in federal law under Public Law 102-395, Section 610. 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 commercial enterprises that will 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, Commerce, Research and Economic Development on the progress of that application process 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.

Enacted Law Summary

Public Law 2011, chapter 304 enacts all the provisions contained in Committee Amendment A to LD 1.

Public Law 2011, chapter 304 was enacted as an emergency effective June 13, 2011, except that those sections of the law that amend the Maine Revised Statutes, Title 38, section 341-C (relating to the membership of the Board of Environmental Protection) take effect on September 16, 2011.

LD 160 *Resolve, To Require the Department of Agriculture, Food and Rural Resources and the Department of Public Safety To Develop a Consolidated License for Convenience Stores* ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HUNT	ONTP	

This resolve requires the Commissioner of Agriculture, Food and Rural Resources and the Commissioner of Public Safety to jointly examine the various licensing and inspection requirements placed on operators of convenience stores and develop a consolidated convenience store operation license and a method of consolidating and reducing the number of annual inspections. The commissioners are required to report their findings, along with any necessary implementing legislation, to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by December 1, 2011.

LD 730 *An Act To Streamline the Issuance of State Business Licenses* ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
THOMAS	ONTP	

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This bill streamlines the issuance of state business licenses by creating a retail business portfolio license program in the Department of Economic and Community Development, Office of Business Development. The program, which would begin on January 3, 2012, requires the office to issue a single, consolidated portfolio license to any person possessing a sales tax registration certificate issued for the purpose of operating a retail sales facility. The portfolio license would consolidate into a single license all individual business licenses required for that facility to conduct business in the State, would have a single, prorated renewal date for all licenses in the portfolio license and would be available at a fee not to exceed the sum of the fees for each of the individual licenses.

The bill requires the Director of the Office of Business Development to adopt routine technical rules by December 1, 2011 in order to begin the program on January 3, 2012. The bill also requires the director, by January 15, 2012, to report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development on the operation of the program and on any statutory changes necessary to improve the effective operation of the program.

SUBJECT INDEX

Regulatory Reform

Enacted

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Not Enacted

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