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STATE OF MAINE
REGULATORY FAIRNESS BOARD

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IN RE: PUBLIC HEARING HELD ON DECEMBER 14, 2009

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Taken before Debra J. Fusco, a Notary Public in and for the State of Maine, at the Burton M. Cross Office Building, Capital Street, Augusta, Maine, on December 14, 2009, beginning at 1:00 p.m., pursuant to notice given.

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3 CHAIRMAN STANLEY: Welcome to this public
4 hearing of the Maine Regulatory Fairness Board. The
5 hearing is now in session.

6 My name is Eliot Stanley. I am the chair.
7 And the deputy chair to my immediate right is Linda
8 Snyder of Lewiston.

9 Before we begin taking information, I would
10 like to take a few minutes to introduce the board
11 members, explain the purpose of the board and go over
12 some of the basic grounds rules for the hearing.

13 The members who are here today on --
14 starting at the far right, Beth Shissler of Portland.
15 To her left, Ed Phillips of Winthrop who was a member of
16 the board during the previous three years as well. Ms.
17 Snyder I already mentioned, myself. Van Perry of
18 Readfield and our staff person is Tom Merrill of the
19 State Planning Office. He's on the far left over here.
20 We have another member, Marie Emerson, who will be
21 coming in at some point. She's here today but she has
22 been delayed. She will be coming in and joining us up
23 here.

24 The purpose of the board is to hold hearings
25 to gather input from the public and report to the

1 legislature and the governor at least annually on
2 regulatory and statutory changes necessary to enhance
3 the state's business climate. The Board is especially
4 interested in hearing from businesses that feel that
5 they have been unfairly impacted by state rules and laws
6 governing their business or have suggestions as to how
7 laws and regulations can be made more effective or less
8 burdensome. We are interested in hearing what is
9 working as well as what is not working.

10 The role of the Board is advisory. We
11 cannot take direct action. It is our job to hear the
12 concerns of Maine's businesses and to make
13 recommendations to the legislature and the governor on
14 how to improve Maine's regulatory environment.

15 We will -- we have a number of people who
16 have been slated to be witnesses and in addition after
17 they have finished, we will ask for other members of the
18 public who might want to say a few words to the board to
19 step forward, et cetera. So we will get to that if you
20 want to be heard.

21 We will ask each person to state your name
22 and address and the business or organization you
23 represent or personally if you're here in that capacity.

24 After you have finished, please stay at the
25 desk for questions from the Board. Board members may

1 wish to ask questions for clarification and to improve
2 their understanding of the nature of the regulatory
3 problem you are facing.

4 Please provide the Board with written copies
5 of your testimony if at all possible. Those could
6 either be here or after you have appeared. If you
7 happen to have them with you, that would be great.

8 You will not be sworn in. We don't take
9 testimony under oath. This is not a Board that has that
10 power. We are an advisory board and not an adjudicatory
11 body. We want to hear from everyone who wishes to
12 speak. Please address the Board at all times. Please
13 be specific and concise. Please be courteous. The
14 proceedings are public and are being recorded and we
15 would ask members of the audience who are sitting here
16 not to interrupt a witness who is making a statement.
17 Let him or her be heard and then at the end of that,
18 after we then had a round of questions, if there are
19 additional questions from those sitting in the room that
20 you want to direct to that witness, that would be the
21 time that we will do that and we will call on you for
22 that purpose.

23 So I think that probably gives enough right
24 now for us to get underway. And I will ask Mr. Van
25 Perry, one of our members, if he will introduce our

1 first witness. Van?

2 MR. PERRY: Sure.

3 I would like to introduce Matt Jacobson, the
4 president of Maine & Company. Matt Jacobson is the
5 president and CEO of Maine & Company. Under Matt's
6 leadership since 2006, Maine & Company has recruited
7 several major companies to Maine including NotifyMD,
8 athenahealth and Boston Financial Data Services. These
9 companies will combine to hire over 1,500 new employees.

10 Prior to joining Maine & Company, Matt was
11 most recently assistant vice president for sales and
12 marketing for Canadian National Railways based in
13 Chicago. In his role at CN, Matt was responsible for
14 international and North America intermodal sales and
15 marketing.

16 From 1996 to 2000, Matt was president and
17 chief operating officer of the St. Lawrence & Atlantic
18 Railroad headquartered in Auburn. During his four-year
19 tenure, the railroad tripled its revenue and attracted
20 23 new businesses in its line. Matt was featured in the
21 Wall Street Journal and the St. Lawrence was named North
22 America's best shortline railroad by Railway Age
23 Magazine.

24 Matt is a graduate of the United States
25 Naval Academy and holds an MBA from Chapman University.

1 He was a pilot in the U.S. Air Force serving in Europe,
2 Africa and the Middle East. Matt has over 3000 hours of
3 flight time, primarily in command of the C-130 Hercules.

4 Thank you, let us welcome Matt.

5 MR. JACOBSON: Thanks for that kind
6 introduction. My mother wrote that so it's a little
7 embarrassing when people read the whole thing. But
8 thank you and thank you for what you're doing. I
9 appreciate you making the effort to try to make it
10 better.

11 Let me just give you a little of a review of
12 what Maine & Company does and then maybe bring it more
13 to some specifics about what we've learned over the last
14 few years about business attraction and how some
15 companies are viewing relocation or expansion decisions
16 in Maine.

17 Maine & Company, we focus on three areas to
18 grow jobs. We figure you can either bring a new
19 business here, you can help an existing new business
20 expand or you can help an early-stage company get
21 started. We try to stick our noses in each of those
22 three areas to see what we can do to help.

23 So in that experience, we have had some
24 success recruiting businesses to Maine. Mind you, every
25 company has a different prism that they look through

1 before they make a relocation or an expansion decision
2 so each one is a little different. But there are some
3 truths around each of those three areas that we have
4 learned and the first is tax policy and the amount and
5 number of different taxes that businesses have to comply
6 and deal with. The more there are, the harder they are
7 to find out and the less predictable they are, the less
8 opportunity that we're going to have to recruit and to
9 retain businesses in Maine. So it's just a number of --
10 are they expanding, are they changing, do we fix them
11 every year or do we -- and I think the better tax is one
12 that I hear a lot of both existing businesses and
13 business of away, what are you going to do with that and
14 does it change every year and if it does, then makes it
15 more unpredictable and it's harder for them to make a
16 decision. And that really goes to the next thing and
17 this is the one that I think is really universal and one
18 that I think can have the most effect on and that's this
19 notion of predictable and reasonable legislation. What
20 we're seeing now is about speed to approve or
21 disapprove. Mind you no in 30 days is better than maybe
22 in four years, okay, and I'll give you a concrete
23 example of that.

24 Our latest success at Maine & Company is a
25 company called Plum Choice. They're a very high-tech

1 company. They announced six weeks ago 125 jobs between
2 now and the end of this year in Scarborough. And next
3 year, they're going to hire between three and 500
4 work-from-home technicians that will be supported by
5 this facility in Scarborough. When we first met them,
6 they said we have narrowed it down to 10 cities. You
7 have two weeks to come back, and here is our list of
8 requirements. You have two weeks, we're going to make a
9 decision so you have to get that stuff in sooner. But
10 in two weeks, we are going to decide. Six weeks after
11 that, we will be up and running and they were. Okay so
12 that means that we have to be able to approve things
13 very, very quickly or have them already approved. So it
14 precluded any brownfield or greenfield development with
15 this company. It precluded any business or any building
16 that was in disrepair, like an old mill. I had to have
17 a building where they can move into right now and had
18 the wiring and then I could also get the parking
19 improvements approved by the city quickly, the --
20 whatever building permits if they needed to get done.
21 All of that had to get done very quickly. I think that
22 phenomenon is going to increase. I think over time that
23 speed to react is going to be more of a determinant than
24 it's ever been and let me tell you why:

25 In a normal environment, people wait a long

1 time to make a capital decision in business because they
2 have to spend money. And now they're waiting even
3 longer to make that capital decision until the point
4 where when they finally make it, it will be like Plum
5 Choice, we need to be up and running in eight weeks
6 because we've put this decision off. Either we couldn't
7 get money, we don't want to spend money or we have all
8 this pent-up demand and so the companies are going to
9 pick places where they can expand very quickly. And the
10 longer it takes to react, the harder it is.

11 Massachusetts passed a law, I guess
12 18 months ago now, from the time you make application
13 until the time you get an answer is 120 days, okay?

14 Bristol-Myers Squibb announced a new
15 facility, the base in Concord, I forget the name, it's
16 not important. But the point is, they announced a
17 \$750,000,000 investment. From the time they made
18 application to the time they got all their approvals was
19 39 days.

20 In Florida, both Jacksonville and Miami have
21 statutes of 30 days for regulatory approval. So from
22 the time you put application in until the time they, by
23 statute, have to give you an answer is 30 days.

24 I think states that have that kind of speed
25 -- we're not talking about the onus or what the

1 regulations are but the speed to which you can say yes
2 or no and approve a process. That's going to determine
3 winners.

4 The third thing that businesses talk a lot
5 about is workforce and workforce development. We have
6 two programs in Maine to help companies train
7 businesses. The first is called the GTI, and Governor's
8 Training Initiative and the second is called The Quality
9 Center. Quality Center, you give your syllabus to the
10 community college, they train people for you and then
11 you can hire them or not.

12 GTI, the Governor's Training Initiative, we
13 give you money, you turn that into training and then you
14 hire the employees so there are two different ways.

15 Now, of the companies that we've been
16 successful locating to Maine in the last few years,
17 athenahealth, NotifyMD, Boston Financial; all very
18 proprietary companies. So they're not interested in
19 giving their syllabus to a community college. They want
20 to keep their syllabus internal. They don't want to
21 share what they're doing. Some of them have HIPPA
22 regulations so they're not allowed to offer a lot of
23 what they do outside. Boston Financial is a subsidiary
24 of Swiss Bank so they are very proprietary. So The
25 Quality Center is not something they're interested in,

1 they only want GTI.

2 As far as policy makers goes, then you have
3 to make your decision on which kinds of businesses
4 you're looking to attract or expand. Either program
5 works fine, they both train workers. But if you're
6 going to put all of your money in the quality centers
7 and then expect high-tech companies, well, they don't
8 mix. It's very difficult to mix those two programs.

9 So those are the three lessons. It's speed,
10 it's reasonableness and it's workforce and tax policy.
11 Those are the three things that we find. And if that
12 sparks some questions to answer --

13 CHAIRMAN STANLEY: All right. Do you think
14 from what you have seen that we have the apparatus in
15 place in Maine to give businesses -- start-up businesses
16 or even those already -- adequate information about the
17 regulatory structure that they're going to have to deal
18 with? Would it be helpful, for example, to have some
19 kind of codification of that regulatory scheme so that
20 new businesses or start-up businesses had something to
21 refer to right away?

22 MR. JACOBSON: Yes, sir. I think that's a
23 really insightful point. I was talking with Becky
24 Stockbridge last week. And Becky is the woman that just
25 won one of the top 25 entrepreneurs under 25 in the

1 country by Business Week Magazine. She's a website
2 designer out of the University of Southern Maine,
3 brilliant woman, and started a new business. And one of
4 the things that she said was how surprised she was that
5 every time she turns around, there is something that she
6 has to comply with. She's not upset about having to
7 comply, it's just that she's surprised with what it is
8 she has to comply with. A central clearing house on
9 what are the regulations around a business I think would
10 be very helpful.

11 CHAIRMAN STANLEY: What is her name again?

12 MR. JACOBSON: Becky Stockbridge and her
13 company is iBec Creative.

14 CHAIRMAN STANLEY: What is her connection to
15 USM?

16 MR. JACOBSON: She graduated from there.
17 She has a dual major in art and entrepreneurialism and
18 started a website design company here in Maine. And one
19 of the best -- top 25 entrepreneurs in the country under
20 25 by Business Week Magazine. So some notoriety. But
21 one of the things she said was she was surprised almost
22 everyday that there is something else she has to comply
23 with in terms of regulation. I think if we had a
24 website or a one-pager that said, okay, here are the
25 things you have to do, I think that would be helpful.

1 CHAIRMAN STANLEY: I will turn now to our
2 deputy chair, Linda Snyder, if she has any questions.

3 MS. SNYDER: We had just talked briefly
4 prior to this but it's sort of an issue of Maine being a
5 tugboat versus a barge. You know, how nimble are we
6 being able to bring in new businesses. You talked about
7 Florida 30 days, Massachusetts has a 120-day law. Do
8 you have any sense of what the average length of time
9 start to finish in siting a new business here might be?

10 MR. JACOBSON: It really depends on the
11 business, and I don't mean to be dodging. But for like
12 Plum Choice, there was an existing building that had the
13 existing wiring and we were able to offer a solution
14 that fit their matrix. We had to get quick approval on
15 a couple of building things at Scarborough but that was
16 relatively quick. So there wasn't a lot of regulation
17 required.

18 Now up in Burnham where we sited a new
19 pellet manufacturer this summer. They're collocating
20 with Pried Manufacturing up in Burnham and so a lot of
21 the site work had already been done. But that process,
22 we're a year into it and we're still not complete with
23 all of the different regulations. So for a greenfield
24 site, it's a long time.

25 CHAIRMAN STANLEY: Is the Plum spelled with

1 a B or not.

2 MR. JACOBSON: P-L-U-M Choice.

3 CHAIRMAN STANLEY: All right.

4 Linda, do you have anything else?

5 MS. SNYDER: No.

6 CHAIRMAN STANLEY: Ed Phillips.

7 MR. PHILLIPS: My concern is small towns,
8 small town planning boards, there is no way you're even
9 going to get a hearing in 30 days. You're lucky if you
10 get a hearing in 90 days. So a lot of what you appear
11 to do does apply to places like Scarborough or Portland
12 sites that have professional planning staff that can
13 make decisions.

14 MR. JACOBSON: I think if they're waiting
15 until the opportunity presents itself, then, sir, I
16 think I agree with you, that then they get
17 disadvantaged. If they have done the time beforehand so
18 that they know to what they're willing to say yes, why
19 then when the opportunity presents itself, they have
20 already done the work and so they can act very quickly
21 or appear to act very quickly even though it might have
22 taken years to get to that decision. Mind you the
23 places that where we have been successful at Maine &
24 Company haven't been in the big cities. We have never
25 put a business in Portland or in Bangor. We have had

1 some luck in Auburn and Lewiston. They act very quickly
2 and they react fast and they do have planning staff.
3 But Burnham doesn't, Scarborough did but we didn't
4 require it. Rockland, Belfast, Fort Kent, Presque Isle,
5 Biddeford, those are some of the places where we have
6 put businesses in the last two years or so. Some had
7 staff, some didn't. But I'm not so sure that the staff
8 is necessarily the issue but the issue is whether or not
9 you, as a town, have decided what you're willing to say
10 yes to, however your structure works, so that when the
11 opportunity presents itself, then you can say yes or no
12 without having to wait for that next hearing date.

13 MR. PHILLIPS: How about workforce? I
14 honestly believe we have a shortage of workers in Maine.
15 We're not retaining our young people.

16 MR. JACOBSON: Yeah, I think that's a
17 significant issue. And every business we talk to, talks
18 about workforce and do you have enough people to make me
19 successful today and will you have enough tomorrow. I
20 can usually solve the today problem. It's the tomorrow
21 problem that we run into problems with and say look at
22 our demographics. I have had site-location consultants
23 -- and maybe I ought to take a step back. The
24 site-location process, virtually 80 percent of the
25 Fortune 500 use a site-location consultant to make a

1 relocation or expansion decision. And there is probably
2 -- registered there are probably 25,000 across the
3 country. There are probably five big companies that do
4 this kind of work. The largest is probably Jones Lang
5 LaSalle. They just bought Roger Staubach's company.
6 Roger Staubach, the football player, had up until then
7 one of the largest site-location consulting companies in
8 the world. They have 100 people in Dallas, and their
9 only job is to evaluate tax incentives. That's what
10 they do for a living for all of their clients. So it's
11 a fairly detailed process, but site-location consultants
12 know more about us than we do. And I had one who was
13 prepared to quote our graduation statistics versus
14 others states and for high school and college and degree
15 attainment and said, look, I'm working in high-tech
16 businesses, you're not producing enough kids so we have
17 lined you off our list. That was in October at a
18 site-location consultant meeting down in Atlanta. So,
19 yeah, that's a significant problem, whether or not we
20 can maintain the workforce and it's the chicken and the
21 egg. Do you bring the company first or the jobs first?
22 I'm convinced that today we have enough people, it's the
23 tomorrow problem. If we can convince them to get here
24 and put in the right educational process, we can fix the
25 tomorrow problem as well.

1 CHAIRMAN STANLEY: Thank you.

2 Van Perry, do you want to turn on your mic
3 there?

4 MR. PERRY: Sure. I have a couple of
5 questions.

6 Matt, we have talked before about the
7 default to yes versus the default to no. Can you talk a
8 little bit about that?

9 MR. JACOBSON: Yes. Both of the three
10 examples that I cited in -- the two in Florida, Miami
11 and Jacksonville, and Massachusetts, the default is yes.
12 So the burden is on the regulator to come up with a
13 reason to say no. If not, then it's yes at the end of
14 the time period which for businesses give them
15 confidence that, A, if I put my capital at risk, it's a
16 finite time. And, B, I've got to shop, they want me to
17 come here. That notion is about mindset.

18 We have cities in Maine that react similarly
19 that will work to say yes. And I'm not saying that
20 every town ought to say yes to every opportunity. In
21 fact, I'm saying that's not the case. But we ought to
22 have spent some time studying so that we know what we're
23 willing to say yes to and we're able to react to that
24 very quickly rather than just whatever comes up the
25 turnpike next and we have to consider it and we wait six

1 weeks. Most of the turnaround time we are getting on
2 projects is weeks if not days on the answers. So we
3 have to move quickly and that, again, is going to get
4 rewarded.

5 MR. PERRY: Okay. Now, when you talked
6 about the pre-approval, where does that decision get
7 made? Is that a local decision or where should that
8 pre-work be done?

9 MR. JACOBSON: I think both local and state
10 have regulations that we could work through in the
11 hypothetical. If I have this particular property and I
12 would like to do manufacturing on it, then the DEP
13 discussion around, yes, you can build there, no, you
14 can't, what are the specifics around where you can, what
15 needs to be mitigated. All of that can be discussed
16 prior to having a deal on the table, but it seems to me
17 we do it the other way. We wait until there is a deal,
18 we come in and put it on the table and then DEP comes in
19 and takes a look and the city planning department takes
20 a look and whatever other body has jurisdiction. So my
21 plea is always, when I go to the small towns, is figure
22 out where you're willing to build and get as much of the
23 regulatory approval done before you ever talk to me
24 again so that when I come in, you can say, yes, you can
25 build a factory, here are the dimensions, here are the

1 places and here are the things that you have to
2 mitigate. Having those answers done already takes weeks
3 and weeks out of the process, and it also shows the
4 businesses that you're interested in saying yes.

5 MR. PERRY: Okay. So you can do like a
6 local public/private partnership at the local level --

7 MR. JACOBSON: Absolutely.

8 MR. PERRY: -- and then once that
9 partnership is done and ready, come see you.

10 MR. JACOBSON: Absolutely. Now I can market
11 it. Now I can market it and now I know to what I'm
12 willing to say yes. I mean it's part of the problem
13 they have at Brunswick right now. You talk to Steve
14 Levesque, a lot of companies are interested but what can
15 you sell me? Well, I don't know yet. Well, that I
16 don't know yet makes them go someplace else. Yes,
17 that's a nice facility, yes you have a nice town, yes
18 that looks like a place where an industrial park might
19 work but if you can't tell me exactly what I have to do
20 to get there, then it's hard. And some towns do this
21 very well and some towns don't consider it, and you see
22 that spectrum across Maine.

23 MR. PERRY: So using Brunswick as an
24 example, what do they need to do next?

25 MR. JACOBSON: Well, again, they need to

1 know what they're able to say yes to. I think right now
2 they don't know how the buildings are going to be
3 distributed. Are they going to have to pay for them,
4 are they going to have to bid them? Just being able to
5 know what you're willing to sell and how much you're
6 willing to sell it for or not or give it away or
7 whatever. But they don't know who owns the buildings
8 yet or how much. That's a problem. They can't say yes
9 to anyone yet.

10 MR. PERRY: Okay, thank you.

11 CHAIRMAN STANLEY: Beth Shissler.

12 MS. SHISSLER: Hi, Matt.

13 MR. JACOBSON: Hi.

14 MS. SHISSLER: I think one of the things I'm
15 questioning is whether we actually have a strategic
16 planning issue or whether we have a regulatory issue.
17 And I'm not sure how effective we as a group can be if
18 it's not a regulatory issue. It sounds like some of our
19 issues are lack of strategic planning and vision. But
20 it also sounds like the site-location specialists really
21 have at their fingertips, the best in class anywhere in
22 the U.S. Is there one in particular that is friendly
23 enough with you and/or Maine that could kind of give us
24 an overview of kind of the best in class in site
25 approvals?

1 MR. JACOBSON: Sure. I know a few. And I'm
2 happy to give you -- Jonathan Sangster we have had up a
3 couple of times. In fact, we had him speak at USM and
4 came up and helped us. We did a review of Brunswick and
5 what that might become, and we have worked with him on
6 more than a few projects. He's great and would be happy
7 to talk to you. I don't know if you can get him up
8 here. He'll certainly talk on the phone. Winter in
9 Maine, it's hard to get guys from Atlanta to fly north.
10 But if we asked him, he would do everything he could to
11 help.

12 MS. SHISSLER: And who is that?

13 MR. JACOBSON: Jonathan Sangster, and I'm
14 happy to give you his contact information.

15 MS. SHISSLER: I will follow up with you.

16 The workforce training, do you think that
17 there is a general awareness of everybody in the state
18 to these two programs that we have? Do you think it's
19 an awareness problem or a problem with the programs?

20 MR. JACOBSON: It depends on the size of the
21 company. Certainly like The Manufacturer's Association,
22 their members know about how to go about it. Certainly
23 any company that we touch, they always ask the question
24 how do you train your workers up there because every
25 state has some program and they want to know what it's

1 about. I haven't done a survey so I'm not exactly sure,
2 but there is always a funding issue. Do we have enough
3 money in these pots to be able to train these workers
4 the companies want. That's always an issue so I'm not
5 -- I don't know.

6 MS. SHISSLER: Are these programs effective?

7 MR. JACOBSON: Yes, without any question
8 they're effective.

9 MS. SHISSLER: So as the third of the three
10 things to grow companies and grow business in Maine, we
11 actually have programs that are effective, it's just a
12 matter of utilizing them?

13 MR. JACOBSON: I think that's right. Right,
14 do we fund them and do we have enough people knowing
15 they're there. But they're great programs and they're
16 among the best in the country around flexibility and
17 what we can use them for, they're terrific programs.

18 MS. SHISSLER: Okay, thanks.

19 CHAIRMAN STANLEY: Tom Merrill, do you have
20 any questions?

21 MR. MERRILL: No.

22 CHAIRMAN STANLEY: Tom is an economist with
23 the State Planning Office and is our staff person for
24 this commission.

25 If there are no more questions, we will go

1 to the public. Is there anyone in the audience who
2 would like to address a question to the witness? And if
3 so, would you introduce yourself and so on for the
4 record.

5 I don't see any hands so with our
6 appreciation, Mr. Jacobson, we will release you and we
7 might want to call on you again either in person or by
8 e-mail or whatever.

9 MR. JACOBSON: I am at your service. Thank
10 you for asking.

11 CHAIRMAN STANLEY: Thank you for your help.
12 Is Chris Hall here?

13 MR. HALL: Good afternoon.

14 CHAIRMAN STANLEY: Our second witness, Chris
15 Hall, is a senior vice president of the Portland Chamber
16 of Commerce. He provides the organization's 1,500
17 members with advocacy and governmental relations
18 services. He is an attorney who graduated from Bowdoin
19 College in 1979, from Boston University School of Law in
20 1986 and who practiced law in Portland, Maine from 1986
21 to 1990. In 1990, he went to work for the Maine State
22 Chamber of Commerce where he spent 17 years representing
23 the state's business community before local, regional,
24 state and federal policy makers. His areas of policy
25 experience include tax, fiscal, environmental, education

1 and labor issues. Mr. Hall continues to appear
2 regularly before state lawmakers, regulatory agencies
3 and other governmental bodies on behalf of the Portland
4 Regional Chamber's members addressing all of the issues
5 of concern to the Portland region's employers. He has
6 lived in Buxton for the last 23 years with his wife and
7 children.

8 Welcome Mr. Chris Hall.

9 MR. HALL: Chairman Stanley, members of the
10 board, thank you very much for having me. I appreciate
11 the opportunity to address you and thanks for the
12 invitation.

13 Yeah, you know, it was about 20 years ago
14 that I was leaving the private practice of law in
15 Portland and I got to come up here and learn the public
16 policy arena. And working on behalf of the business
17 community all that time, you kind of build up some
18 things that you think you know. And maybe you're not
19 right about every single one of them, but I would like
20 to share some of those experiences and insights with
21 you. Particularly with respect to the first question
22 that you asked which was, as I understood it, how do we
23 have a better regulatory climate in Maine? I'm also
24 going to spend a couple minutes on the second question
25 which I believe Ms. Shissler indicated in response to

1 Mr. Jacobson that it may be a little bit beyond the
2 mandate of the Board but I think still deserves a little
3 comment and that's how are we going to get this economy
4 started, what are we going to do about that?

5 First let me tell you this issue of what's
6 wrong with our regulatory system, I have been working on
7 it for 20 years. I see John Doyle is here, and he's
8 been working on it longer than that, so has David Clough
9 and you will hear from both of them in a minute.

10 I need a way to think about it because
11 otherwise I get drawn into a detailed conversation of
12 the site law exemption that had an NRPA setback
13 violation and, you know, who sent the first letter to
14 the lawyer? And that doesn't really get you to anything
15 other than the details of what I used to do for work
16 before I got into public policy.

17 There is too much friction in our regulatory
18 system. Mr. Jacobson approached that thought when he
19 was discussing with you the notion that we ought to say
20 yes unless we have a reason to say no. But, in Maine,
21 we often say no unless you can prove that there is a
22 good reason to say yes. Now, that's not all bad. I
23 have to tell you, in all of the time that I have worked
24 for the business community, I have met a ton of people
25 in the regulatory system that are tremendous. People

1 all over the system who very much want to be
2 facilitated, who want to help employers succeed. Often
3 in these conversations, that observation goes unstated.
4 So I just wanted to put it out there that what we're
5 going to discuss isn't some sort of broad-based
6 indictment of every single person who works in state
7 government or local government or whatever because that
8 just would be totally unfair.

9 I think about the Department of
10 Environmental Protection runs a small business
11 assistance programs right now that is tremendously
12 successful. Do you know what they do? They have a
13 workbook and the deal is if you're in one of the
14 segments of the economy -- let's say you're in the
15 hospitality business. They give you a workbook and say,
16 here, fill out this workbook to show you things you can
17 do to go beyond compliance and really demonstrate
18 environmental leadership. You wouldn't believe the
19 positive response that you get from this. You get
20 companies going way beyond the regulatory requirements
21 because they get their workers together and everybody
22 starts talking and pretty soon the company is spending
23 money, the workers are engaged and the business has far
24 exceeded the requirements of state and local law so it's
25 not all bad.

1 Now, that's just an example of how a
2 creative approach to regulatory issues can sometimes be
3 pleasantly surprising.

4 What is particularly pleasantly unsurprising
5 -- and maybe you have had this experience yourselves in
6 business -- is the accumulation of friction. Sometimes
7 it's the costs that are being imposed regulatorily on
8 you. And, you know, those costs come to you from the
9 perspective of the regulator. Nobody ever asks you as a
10 business owner can you afford this, you just get the
11 bill. Sometimes it comes with paperwork. I can't count
12 the number of times that people have said to me, and I
13 know it sounds mundane but it is actually a little
14 deeper than this: I have to fill out duplicate
15 paperwork all the time. I have to send a form to agency
16 A, but then agency B wants the same information on a
17 different form and six months later agency C comes along
18 and, gosh, I have to do it all over again. It's been
19 observed that you might want -- I think the chairman
20 suggested a single point of contact for new business.
21 Let me tell you, existing employers, especially small
22 employers, could really use some simplification in terms
23 of the paperwork they experience. Now, this isn't just
24 an I'm too busy to do your form thing. What you're
25 going to discover if you dig into this, is there is an

1 enormous amount of overlapping jurisdiction. And we are
2 about to enter into a conversation here at the state
3 house in the next couple of weeks about consolidating
4 and reducing the size of government because we can't
5 afford it anymore.

6 I can think of dozens of examples where
7 multiple agencies touch a business on a particular
8 point. Again, I don't want to divert us into the
9 minutia of a particular example, but we can certainly
10 discuss them later. Why aren't we consolidating those
11 experiences, again, from the perspective of the
12 customer? I'm not suggesting we don't provide the
13 information to whoever needs it. I'm not suggesting
14 that we don't regulate things however they need to be
15 regulated. But I am suggesting that when you have many
16 hands touching one business over a single issue and land
17 use, of course, is a ripe example, who are engaged in
18 something that may have grown up as a matter of custom
19 and regular progress but no longer can we afford it.

20 Duplicating paperwork and cutting back on
21 that is going to take you into a conversation that is
22 really at the heart of our budget problem and is frankly
23 a third rail politically. It's really, really hard to
24 talk about it in a successful way. But from the
25 perspective of the business owner, the person who is

1 just trying to fill out the paperwork and pay the fees,
2 it's really, really burdensome and it creates a dramatic
3 amount of friction.

4 I think that when we talk about how best to
5 improve the regulatory climate, consistency is another
6 place that is just a bugbear for many employers. You
7 can get caught in inconsistent regulatory situations a
8 number of ways. You can get two answers from the same
9 agency. You can get two different answers from two
10 different agencies. You can have the right answer until
11 it's wrong but you didn't know that. And, again, part
12 of this is the regulatory system not approaching the
13 business owner as a customer but rather as an object to
14 be acted upon. Part of it is deeper than that. Part of
15 it isn't just training your employees to be more
16 sensitive to their customers. Part of it is real honest
17 jurisdictional and policy disagreements where their
18 business owner becomes the battleground.

19 I will just quickly draw an example for you.
20 Down in our neck of the woods, we have the Long Creek
21 Watershed. We have a lot of landowners down there,
22 business owners, who got site law permits back in the
23 70's and 80's and they did exactly what they were told,
24 often at an extraordinary expense. And they're now
25 finding out that what they did was wrong.

1 Now, you and I might understand the evolving
2 nature of storm water mitigation and we might understand
3 the motivations of the regulators to say, yeah, okay, I
4 get that, what we did before didn't work and we just
5 didn't know it then. But if you own that land or you
6 own that business and you're trying to stay alive right
7 now in 2009 and somebody comes to you and says we need
8 \$3,000 a month, you don't feel good about that because
9 you felt you did what you were told and you followed the
10 rules and now it's not good enough.

11 I will footnote that anecdote by saying that
12 we are engaged in a collaborative process in the Long
13 Creek Watershed that is hopefully going to mitigate --
14 it's not going to get rid of it -- the costs that are
15 being imposed by this new generation of storm water.
16 And it's a very exciting public/private partnership.
17 It's another example of positive collaborative
18 regulatory interaction with the private sector and I
19 think it's going to be a success story although I can't
20 say that yet but I think it will be. So it's a good
21 example from both sides of the coin.

22 Finally the thing that I want to -- the
23 hardest thing to express but probably the most important
24 thing is this: A lot of times the regulatory experience
25 for employers, especially small employers but not just

1 small employers, feels hostile. It doesn't feel -- they
2 feel like they are -- frankly, they got pulled over for
3 a speeding ticket. Do you know that bad feeling you get
4 when you get pulled over for a speeding ticket? They
5 have that feeling when they interact with the regulatory
6 system and they shouldn't because they're not speeding.

7 A lot of times they may be involved in
8 things that they don't have a perfect and complete
9 understanding of with respect to regulatory requirements
10 and this is true most particularly for small companies
11 who don't have dedicated personnel for compliance
12 purposes. But there are relatively few people who are
13 speeding. Those that are, they should have a bad
14 experience, absolutely. But to treat everyone like a
15 speeder when, in fact, most people aren't -- they're
16 just trying to do the best they can -- creates a
17 fundamental distrust between the small business
18 community and regulatory agencies that really poisons
19 the well. It makes it harder to get compliance, it
20 makes it harder for that company to find help. They
21 tend to hide instead of reaching out. And it is a
22 cultural issue that we have built up over my 20 years --
23 and, as I said, I'm sure people will say it's much more
24 than that -- to the point now where unfortunately people
25 in the private sector, they know that they have a

1 problem, but they don't want to deal with it. People in
2 the public sector know that they want to get somebody to
3 change their behavior but they don't know how to
4 collaborate. I think it's going to take an effort,
5 frankly, of an extraordinary magnitude and it's going to
6 be a generational change before we get to a point where
7 regulators and the regulated community begin to see each
8 other as collaborators and not as opponents. And this
9 can come up in, I think, any regulatory environment.
10 And I want to reiterate what I said at the outset: Not
11 every regulator is guilty of this. There are many that
12 are just the opposite of this, many that are very
13 helpful, and it is unfair to think of the entire system
14 in this light. But there is enough of this experience
15 out there that it colors, as you well know. It takes a
16 few apples to make the whole -- right, isn't that how it
17 works? So we do have a present and continuing issue
18 there that needs to be addressed.

19 Those are some generalities, if you will.
20 Make the process of regulation facilitative, not
21 adversarial. Reduce the costs imposed on businesses
22 because from their perspective, that's a huge issue.
23 Require consistency and make sure that duplication is
24 addressed in a way that is helpful to the budget process
25 in this building and, frankly, all across the state.

1 When Angus King first became governor, he
2 had the plus one campaign. I saw Jim McGreggor back
3 there sitting in the audience. Jim represents the Maine
4 Merchants Association. He will recall this because he
5 was at the meeting with me. And Tom McBriarty was the
6 DECD commissioner. They called us in and said, come on,
7 guys, what do we have to do to get everybody to hire one
8 more person in Maine? And Jim and I -- and I don't know
9 if Dave was there, he might have been -- said, okay, if
10 you really want to know, we will tell you. And, you
11 know, Jim started talking about Workers' Comp and I
12 started talking about taxes and somebody else started
13 talking about other stuff. And McBriarty said, wow,
14 wow, hold on. What are you guys trying to do to me? I
15 can't solve all of those problems. I just want to get
16 people to hire somebody. And we all had a laugh and
17 understood what was being said. But I don't believe
18 that these larger issues of how we get this economy
19 started in Maine will ever be successfully addressed
20 until we deal with the core cost drivers that affect
21 return on investment.

22 I appreciate what Matt was saying to you,
23 and Matt does an extraordinary job of finding winners
24 and helping them succeed in Maine and I don't know where
25 we would be without that work. But the fact is he can't

1 help everybody, he can only help a very few. But I
2 represent a ton of people who don't get help from Matt
3 and David represents even more. And what we need beyond
4 the individualized help or the state program that
5 provides the subsidy for a few people, what we need are
6 the cost drivers to come down.

7 I will tell you another story that back in
8 the mid 90's, a bunch of us helped to pass the business
9 equipment tax reimbursement program. We were very proud
10 of that. We thought that it would help reduce the costs
11 of fixed capital in Maine and encourage investment and
12 it did have that effect so we felt it was a good
13 program. We invited the governor of North Carolina up
14 to address this about a year after the bill's passage
15 fully expecting that as a part of the country that was
16 experiencing great growth that he would come up and
17 praise us. And when he got to talking about our newly
18 enacted tax break, he said, well, I think that's a
19 terrible thing, and we were all shocked, why did he
20 think this was bad? We thought it was great. And he
21 said, well, the problem is the tax rate is too high and
22 you put a Band-Aid on it. A Band-Aid doesn't cover
23 everybody, it just covers some people. He said what you
24 really need to do is lower your taxes. So we were like,
25 okay, who invited him? That was a mistake, we shouldn't

1 have had him.

2 I'm sure you're all familiar with this
3 document. And Laurie Lachance and through her work at
4 the Maine Economic Growth Council probably do as good a
5 job as anyone in providing a Maine-specific outline of
6 what I'm talking about. The red flags in here are on
7 healthcare costs, energy costs and state and local tax
8 burden. And some of those red flags have flown for
9 almost a decade now. And so when we look at personal
10 income in Maine and we see that it begins to trail the
11 nation again, I understand that as a symptom of these
12 core cost drivers not having yet been successfully
13 addressed in our state. And I think you can go to
14 national studies. I've got the small business survival
15 index here for 2009. I've also got the American
16 Legislative Exchange Counsel where it states excellent
17 expositions of the detail that I'm referring to. But I
18 think, again, for this Board who does not set tax policy
19 or energy policy or healthcare policy, what you can do
20 is lend your voice helping our legislature to understand
21 that if they want to create jobs, they are going to have
22 to reduce the core cost drivers that reduce return on
23 investment and make Maine an otherwise difficult place
24 to hire one more person. Because we still want to do
25 what McBriarty said, he had a great idea.

1 So I hope that those comments are of some
2 value to you. I would be happy to wrap it up here and
3 take any questions, Mr. Chairman, that you may have.

4 CHAIRMAN STANLEY: Thank you, Mr. Hall.
5 That was a very nice statement. If any of those
6 documents that you have, those reports, are extras and
7 could be left with our staff, we would appreciate it.

8 MR. HALL: I'll make sure Tom knows where to
9 find all of them, absolutely.

10 CHAIRMAN STANLEY: Okay.

11 I'm wondering if you could come down from
12 sort of the macro to the micro for a minute and talk
13 about agencies or boards of the state government of
14 Maine that seem to be chronically coming to your
15 attention as problem or troublemakers for business and
16 perhaps others that are on the other side of that who
17 are models of great business, the kind of rapport that
18 you describe to give us a little more focus on our
19 possible further inquiries. We do receive reports of
20 various kinds, some from individuals, some from
21 businesses saying I really got the business from that
22 agency or that board and sometimes that leads to -- you
23 might say it's the tip of the iceberg that leads to some
24 very significant findings. Do you have any thoughts in
25 that area?

1 MR. HALL: I do. But I have to say, Mr.
2 Chairman, I think that -- here is the source of my
3 reticence in this answer: As a newly minted lobbyist in
4 1990, I was taken up to the Natural Resources Committee
5 and told to represent an individual, a member, who had
6 been done terribly wrong by the Department of
7 Environmental Protection. I zealously tried to do that.
8 I only found out a couple of months later that there was
9 another part of that story that I wasn't aware of that I
10 should have known being trained as a lawyer. But trying
11 to be a zealous lobbyist, I didn't catch up to that
12 until a little later.

13 No one is absolutely black in this and no
14 one is absolutely white. You know, you might ask social
15 service providers if the Department of Labor and DHHS
16 talk to each other. You might look at clients. I have
17 a lot of members who are social service providers,
18 contractors with DHHS. Ask them how the cooperation and
19 the communication -- and I talked about duplicate
20 paperwork. Ask them how that's going between DOL, DHHS
21 and sometimes the Department of Education as well if the
22 client is a child.

23 I think you probably know as well as I do
24 just from reading the press that it is a nightmare, it
25 is a nightmare and it is resulting in enormous

1 additional and redundant cost. Now, is anyone doing
2 wrong? No, they are not. Everyone is trying very hard
3 to do their job under the constraints of HIPPA and other
4 things but that doesn't matter much to the business
5 person who is being whipsawed by the kind of problems I
6 described.

7 You can go to the Department of
8 Environmental Protection, and as I just described to
9 you, you can find marvelous examples of people working
10 collaboratively. You can also find examples of people
11 who think it's 1985 and they are enforcing the law to
12 the letter and they are not interested in working with
13 you as a business.

14 In no case, I think, can you absolve or
15 condemn an agency as a whole. I think rather you have
16 to ask the questions from the perspective of the
17 customer what's not working and then do a real honest
18 systems analysis to find out why it's not working
19 because you're not going to find bad guys. What you're
20 going to find is competing jurisdictions, conflicting
21 requirements, policies that haven't been harmonized.
22 And these are going to be policy choices, they're going
23 to be hard, they're not going to have easy answers but
24 they just scream out from our perspective to be
25 addressed because if we don't, then the friction remains

1 and it becomes harder and harder all of time.

2 CHAIRMAN STANLEY: Just a quick follow-up on
3 that. Do you think there is some part of the governor's
4 office or the executive establishment that ought to be
5 doing the head knocking and the crunching to get some of
6 this stuff worked out at the executive level?

7 MR. HALL: I don't have any assignments for
8 Governor Baldacci who, at the end of his eight years in
9 office, has one of the most incredibly difficult tasks
10 you could ever ask somebody to undertake and that's to
11 balance this budget. The next governor needs to
12 establish an office of regulatory streamlining, call it
13 what you will. The next governor needs to make this a
14 priority. And I think that there will be room and time
15 for the next governor to do that if he or she chooses
16 to.

17 CHAIRMAN STANLEY: Thank you very much.
18 Deputy Chair Snyder.

19 MS. SNYDER: You mentioned that one way of
20 making it better for businesses is requiring
21 consistency, reducing costs, et cetera, et cetera. Say
22 all of those were done, do we have the infractures -- do
23 we then still have the infrastructure to make it work
24 for businesses or do we still need to put an
25 infrastructure in place? I don't know if I'm being

1 clear.

2 MR. HALL: Yeah, just tell me what you mean
3 by infrastructure.

4 MS. SNYDER: Research and development,
5 money.

6 MR. HALL: Good question. And now I
7 understand what you're asking.

8 My first reaction to that is primarily a
9 look toward the education system. There are many
10 infrastructures. There are physical ones, roads,
11 bridges. There are telecommunication infrastructures.
12 For me the most important one is education. We spend a
13 remarkable amount of money in this state on education
14 and yet the results that we achieve are far from what we
15 need to make Maine prosper and to make our children
16 successful. I'm not sure we need more money in
17 education, but I am darn sure we need to spend it
18 differently. So the short answer to your question is
19 no. Even if we were to eliminate all of the friction
20 within the regulatory system, there would be large
21 infrastructure issues still to address, yes.

22 MS. SNYDER: When you talk about friction
23 and consistency, one area that I found is the local
24 municipalities have very different regulations sometimes
25 from the state. And the state supercedes, but you get a

1 little business, let's get started, they have the locals
2 come in and everything is hunky-dory until the state
3 shows up.

4 MR. HALL: I'm only chuckling because I've
5 heard it before.

6 MS. SNYDER: How do we eliminate this
7 problem? Is it more training?

8 MR. HALL: No, it's something I think is a
9 little deeper than that. But, again, I agree with you,
10 the problem statement. We really have a couple of
11 layers of what I would call policy exceptionalism and
12 operation here. Otherwise said, there is a struggle for
13 dominance between local control, state level control and
14 we don't talk about it maybe so much but federal
15 control. And that can work both ways. The state
16 government here at the state house could say, well, we
17 don't like that federal regulation, it doesn't go far
18 enough. So we're going to have a special regulation for
19 Maine that nobody else has. We have plenty of those but
20 I like yours as well which is the local government has a
21 way of dealing with this. They have zoning ordinances,
22 business licensing but, oops, now here comes the state
23 and they don't like the way we did it and now we have to
24 do it over again. Those need to be harmonized, they
25 absolutely do. They are very hard policy questions to

1 -- is the federal regulation enough? Is the local
2 government doing the best job? But they need to be
3 answered and then we need to stick with the answer so we
4 don't keep having three layers to create these
5 inevitable conflicts that arise. So, again, I agree.

6 CHAIRMAN STANLEY: Ed Phillips.

7 MR. PHILLIPS: I see that you're a fan of
8 President Reagan's sign that he had in his office, idiot
9 is low rate broad based.

10 MR. HALL: I didn't know about that sign but
11 I am now a fan, yes.

12 MR. PHILLIPS: In Maine, it seems to be high
13 rate narrow based and to me that seems to be problem.

14 MR. HALL: Yes.

15 MR. PHILLIPS: I agree with you on the three
16 levels. I serve on the Board of Appeals and on a
17 trustee of the Sanitary District so talk about stuff
18 flowing downhill towards you --

19 MR. HALL: Absolutely.

20 MR. PHILLIPS: I used to train all over the
21 world. I did a class a number of years ago for
22 Wal-Mart -- a bad word here in Maine I guess -- in a
23 not-so-good facility. I came back just a hair over a
24 year later and did a class in a new million-and-a-half
25 square foot convention center with a 500-room hotel.

1 And I said to the people, how long did it take for you
2 to build this because I knew it wasn't there a little
3 over a year ago. Less than a year. Less than 30 days
4 for permitting and to go to work. You wouldn't get that
5 through our town in five years, never mind the Cobbossee
6 Watershed, never mind the state DEP and such. So really
7 I think what we're setting here, and John is going to
8 talk about some legislation, but the help that we need
9 from a lot of you people is some legislation to
10 streamline this process. I like the 30 days it's yes.
11 That would kick our planning board in the butt type of
12 thing.

13 MR. HALL: Yeah, it would.

14 MR. PHILLIPS: Guys, if you don't get done
15 in 30 days, it's a yes type of thing. So this may be
16 something that we need to work on for legislation, and
17 we certainly would need help on stuff like that but we
18 do need to do something different.

19 MR. HALL: Oh, we definitely do, sir. Let
20 me just share a concern on this 30-day idea. Let's go
21 back to the Long Creek Watershed. And let's say that
22 somebody wants to come in and build a new shopping-mall
23 unit in there. And let's say we want to protect the
24 Long Creek Watershed because we think it has not just
25 environmental but economic value to us. We think we're

1 going to get business from people who like to hike and
2 picnic which is definitely going happen but we can't do
3 it in 30 days. We can't figure out how to protect the
4 watershed in 30 days, it's going to take us
5 three months. We don't want to say yes to something
6 that's going to hurt the environment just because there
7 is an arbitrary deadline, but we don't want to say no
8 and lose the opportunity.

9 Mr. Jacobson said something that is really,
10 really important, and it bears reemphasizing in this
11 conversation: What do you want to say yes to? What do
12 you want to say yes to? What development is it that you
13 want to support? If we decide that the retail is
14 something -- big box retail is something we want to have
15 right down by the Maine Mall, then let's pre-permit that
16 activity. Let's do it in a way that protects the water.
17 There is no reason not to do that. Then let's have that
18 30-day yes, but let's do it in away that we know what
19 we're saying yes to. I think that frankly there is a
20 huge opportunity here to reclaim control at the local
21 level of these issues that have spun off to state and
22 federal and gosh knows where by saying we're going to
23 decide what we want to say yes to and we are going to
24 pre-permit those and we are going to set it up so
25 anybody that Matt Jacobson meets or anybody else meets

1 wants to come in here, yeah, we can put them in in
2 30 days. You know what? If we want to say yes to a
3 refinery, we will permit a refinery site. We can do
4 that in Maine, you know. Some people wouldn't like it
5 but we could do it and it would be up to the community
6 to decide, and then we could bend the agencies of
7 government to that purpose. But right now, nobody is
8 really sure what we're going to say yes to and as a
9 result, too often we say no.

10 MR. PHILLIPS: Well, I always agree. I
11 think you get your best bang for everything at the local
12 level.

13 MR. HALL: We do, we do. But, again, done
14 in concert with state and federal requirements. Done in
15 a way that is focused and effective and that we can have
16 some consensus around.

17 I'll tell you something else that is a big
18 problem in our neck of the woods is this idea that you
19 can have a zoning bill passed and then have the citizens
20 reverse the zone after the capital has been invested.
21 Oh, my God, it's just devastating. We could make a long
22 list for you of things we need to address.

23 MR. PHILLIPS: But I still have a bone to
24 pick with you.

25 MR. HALL: Well, I'm glad you do. That's

1 excellent.

2 MR. PHILLIPS: Where I'm a local control guy
3 and you guys came out and spent some money on school
4 consolidation which I'm dead set against --

5 MR. HALL: That's one of the vagaries of
6 working for a chamber of commerce is people never know
7 who you work for. It is true that our organization did
8 support school consolidation but we were not part of the
9 funding group. Those were some other organizations, not
10 ours. You know what? That bill will be back before the
11 education committee this year. Maybe we can go talk to
12 them then about it.

13 MR. PHILLIPS: It cost our town a half
14 million dollars, and John's town got most of it.

15 MR. HALL: There you have your explanation;
16 blame John.

17 CHAIRMAN STANLEY: All right. Are you
18 through, Ed?

19 MR. PHILLIPS: Yes, I am.

20 CHAIRMAN STANLEY: Marie Emerson.

21 MS. EMERSON: Your presentation was
22 well-organized and well-spoken.

23 You talk a lot about duplication and
24 harmonizing policy and streamlining regulation. Are you
25 aware of the best practice state that you could look at

1 as a model?

2 MR. HALL: I think there are a half a dozen
3 that have made really serious efforts of the kind that I
4 suggest and I would be happy to get that list for you.

5 MS. EMERSON: Can you talk a little bit
6 about how they have done it?

7 MR. HALL: Well, I think they have done it
8 by making some very difficult choices very honestly.
9 There have been governors that have come into office
10 with job creation as a priority and they have set aside
11 custom and practice. They have probably upset, you
12 know, some things that have been going on for quite a
13 while but they have done it in pursuit of attracting
14 capital. I think here in Maine, it's something that we
15 always need to understand that the purposes of
16 regulation are not something we should ignore or
17 denigrate but rather the means by which those purposes
18 are achieved could be much more flexible than they are.
19 And so I think that's the hallmark of every successful
20 effort around the country in the last 10 years to
21 streamline regulations.

22 MS. EMERSON: What state comes to mind
23 first?

24 MR. HALL: I'm not going to nominate a
25 winner, but I will get you a list.

1 CHAIRMAN STANLEY: Van Perry.

2 MR. PERRY: I wanted to get back to what you
3 called core cost drivers.

4 MR. HALL: Yes.

5 MR. PERRY: On the surface, that doesn't
6 necessarily sound like regulations but I assume that
7 each of those core cost drivers has specific regulations
8 behind them that are making them high cost.

9 MR. HALL: Very much so.

10 MR. PERRY: I was just wondering if you
11 could mention some specifics.

12 MR. HALL: Yes. Let's look at Maine's
13 healthcare regulations, for example. They are, in many
14 ways, if not unique, then very unusual when you look at
15 the national perspective. Again, if you want to look at
16 the small business survival guide, for instance, we can
17 draw some specific numbers for you. Let's look at
18 Maine's energy regulations. There we are tied into a
19 regional system that is interested not in the cost of
20 power but rather its consistency and reliability.
21 Perfectly good goals, obviously important goals, and yet
22 we are losing our industrial base to one of the highest
23 costs of power in New England.

24 Let's look at our tax system. You know, we
25 have a 15th in the nation state and local tax burden but

1 we have a 17th century structure for administering those
2 taxes. We have over 400 jurisdictions assessing
3 property tax. We have a sales tax that is being
4 administered in a very shall we say mechanistic way that
5 catches many small businesses by surprise. There are
6 lots of regulatory issues within each of those cost
7 drivers that were they addressed could drive down cost
8 of energy, cost of healthcare, the cost of taxes and
9 spending in Maine. So, yeah, they're in there.

10 MR. PERRY: We could use some
11 recommendations as far as if those are core cost
12 drivers, then what are the regulations that we should
13 address?

14 MR. HALL: Some of the -- we talked a little
15 bit before about this competition for dominance and
16 policy. Maine doesn't conform to the federal income tax
17 code. And as a result, small businesses in Maine have
18 many tax provisions they have to abide by that don't
19 mirror the federal code. Net operating loss is treated
20 differently in Maine than it is of the federal return.
21 Depreciation is accelerated at the federal level in ways
22 that hasn't been extended to the state. You know what
23 that winds up doing is that companies often have to hire
24 an accountant to do what is essentially a separate set
25 of books to file a tax return in Maine because it's not

1 the same rules as they are at the federal level. Now,
2 that's actually a statute here in Maine, not a
3 regulation, but I think it's illustrative of what I'm
4 trying to talk about.

5 MR. PERRY: Excellent. Thank you.

6 CHAIRMAN STANLEY: Beth Shissler.

7 MS. SHISSLER: Hi. As a business owner in
8 Portland, thank you for your feedback. I appreciate it.

9 MR. HALL: Thank you.

10 MS. SHISSLER: I think some of it does go
11 back to my initial point to Matt is that a lot of it --
12 and you said it yourself -- has to do with job creation
13 being a priority and that's really a strategic issue
14 more so than a regulatory issue. The direction has to
15 come from the top down if this is a priority.

16 MR. HALL: Yes.

17 MS. SHISSLER: But going back to the plus
18 one initiative, if the business owners ask for
19 reciprocity in the government and in order to hire one,
20 you requested one change in the regulatory process, what
21 would it be?

22 MR. HALL: In my business? Everyone would
23 ask for a different change, you know.

24 MS. SHISSLER: But you see lot of business.
25 You're here today speaking for the whole so --

1 MR. HALL: Yes, and you asked me to
2 prioritize.

3 I think it's the cultural issue. If I could
4 change one thing about the State's regulatory climate,
5 it would be the adversarial nature of the cultural
6 relationship between business and state regulators and
7 not just state regulators. That's what I would change
8 first.

9 MS. SHISSLER: Your point is hostility?

10 MR. HALL: Yeah. Because I think that if
11 you change that, frankly a lot of the other stuff
12 becomes easier and more malleable. Well, I could spin
13 that out for you but I'm not going to. You take my
14 point. If I could change one thing, it would be
15 people's attitudes, regulators and frankly the public's
16 attitude --

17 MS. SHISSLER: And it doesn't cost us
18 anything.

19 MR. HALL: It doesn't cost a darn thing.

20 MS. SHISSLER: Point well taken. Thank you.

21 MR. HALL: Thank you.

22 CHAIRMAN STANLEY: Any other questions,
23 staff?

24 MR. MERRILL: In thinking about whether
25 30 days is concrete or not, but just in thinking about a

1 set time to default to a yes or fall back on a pre-work
2 approval, I was thinking about Maine's Informed Growth
3 Act. Any big box stores, it requires them to contract
4 an economic impact study. Something like that doesn't
5 really fit in a predefined window. It may take a
6 different amount of time.

7 MR. HALL: That's correct.

8 MR. MERRILL: Such a study includes
9 quantitative data sources on a national level right down
10 to qualitative sources at the very local level. I'm
11 just thinking of a conflict in putting a blanket policy
12 or a number of days. I guess how do you feel about the
13 Informed Growth Act as opposed to structuring regulation
14 that would facilitate that or --

15 MR. HALL: I'm happy to answer. One of the
16 first things that I actually had some success, maybe
17 limited success, as a lobbyist was when we asked DEP to
18 reinstitute timelines in its permitting process. Prior
19 to 1992, DEP didn't have any timelines in there. I have
20 to tell you, they fought like heck, they didn't want a
21 timeline but we did persuade the legislature to insert
22 them, they're still there today. The experience of 15
23 or longer years is that those timelines get waived on
24 threat of denial. You put in an application, it says
25 it's going to be ready in 90 days by statute but you get

1 to the eightieth day and DEP calls you up and says we
2 can't get this done in the next ten days, will you waive
3 the deadline for us. And you can say yes, I will and
4 negotiate another period of time or you can say no and
5 then they'll go, well, then we're going to have to deny
6 it. Again, this default to yes or default to no
7 posture.

8 MR. MERRILL: Right.

9 MR. HALL: So my experience with timelines
10 are they work better than no timeline but they're not --
11 in the real world, they're not a magic bullet.

12 The thing about the Informed Growth Act that
13 I found so difficult was that it didn't answer the
14 question what do you want to say yes to. Instead, it
15 seemed like it was one more reason to say no. And I
16 don't mean to be disrespectful when I say that. If you
17 were to ask me to design something for big box retail
18 siting, I would ask the municipality to identify in the
19 comprehensive growth plan where they want it. I would
20 ask them to do the studies that the Informed Growth Act
21 suggests before we get to final approval of the zone.
22 Once the studies are done and the zone's approved, then
23 I think we're back in the mode of being able to say,
24 okay, we have decided we're going to say yes to a
25 30,000 square foot development in this location with

1 these requirements, 30 days and you've got your paper.
2 For me -- I hope I'm being clear. But the Informed
3 Growth Act didn't work for me. That's not to ignore
4 what's being sought there, it's just to find a different
5 mechanism.

6 MR. MERRILL: Thank you.

7 CHAIRMAN STANLEY: Thank you, Mr. Hall.

8 Now, are there any questions from the
9 audience. If so, would you identify yourself for the
10 record and go ahead and stand up. Anybody wishing to
11 pose a question to the witness? I don't see any so no
12 further questions. We will thank you for your
13 contribution, we very much appreciate it.

14 MR. HALL: Thank you, I appreciate it.

15 CHAIRMAN STANLEY: We will ask Ed Phillips
16 to introduce our next witness.

17 MR. PHILLIPS: Most people know John, John
18 Doyle. The reason that I asked John to come in was in
19 the previous hearings, we had a lot of complaints about
20 how licensees were handled by regulatory boards. And
21 many of the licensees felt they weren't getting a fair
22 shake. And John was sitting here and he said something
23 about the Administrative Practices Act and we all said,
24 what are you talking about, John? So he explained to us
25 what the Administrative Practices Act -- enacted in,

1 what, 1977, John?

2 MR. DOYLE: That's right.

3 MR. PHILLIPS: What that accomplished. And
4 then I'm going to let him explain what the
5 Administrative Practices Act was and why it disappeared.
6 But as a result of that, Representative Nancy Smith has
7 submitted a bill at our request to reinstate the Office
8 of Administrative Law Judge, and we will let John talk
9 about that also since I believe you drafted that for us.

10 MR. DOYLE: I think I did. I've done a
11 bunch of bills over the years.

12 Let me give you a little background of my
13 own. I started out in the attorney general's office in
14 1961. I've practiced law now for 48 years. I remember
15 when somebody would tell me that when I was a young
16 lawyer and I would think, boy, one of the ancient folk.
17 Not the case. I was an assistant attorney general, I
18 was the deputy attorney general. I was also legal
19 counsel to the legislator and I created OPLA, Office of
20 Policy and Legislative Analysis. So I have spent most
21 of my career in -- with the exception of ten years as a
22 trial lawyer -- in and around state government. I like
23 the state house, I miss it if I'm not here, it feels
24 like home to me. So a lot of my law practice has been
25 before state agencies. I have a fairly heavy lobby

1 practice and we spend -- half of today I have already
2 with problems dealing with the state.

3 I don't have any bias. You always hear
4 somebody commenting that, well, it's the state
5 employees. No, it's not. I was one, I wasn't that bad.
6 My dad was a state police captain, my mom worked in
7 education. It's really a dedicated group of employees.
8 But every once in a while we get a system that's just
9 flawed.

10 Let me give you a footnote here. I listened
11 carefully to what Chris had to say. Why don't business
12 come to Maine? I can tell you why. I have a bunch of
13 national clients. I have one national client that owns
14 600 different businesses. They make restaurant
15 equipment, they make a bunch of stuff. And I said to
16 them -- chief salesperson one day -- why don't you come
17 to Maine and have one facility in Maine? If you could
18 sum up what problems are for a business locating
19 somewhere, give me one word. It was predictability.
20 This state is badly flawed in business's ability to
21 predict what's going to happen so they don't come and
22 they don't invest. There are other places that are
23 better. I will leave you with that thought and I will
24 get into the Administrative Procedures Act.

25 Back in 1977, there was a move to develop an

1 Administrative Procedures Act because state government
2 in terms of its relationships with its licensees was all
3 over the place. How are you going to deal with
4 somebody's license if there has been a complaint? Think
5 about the people we license. I think about some of the
6 boards I have appeared before. I didn't know there was
7 a wood burning licensure kind of a process. Engineers,
8 doctors, the real estate world. Health and human
9 services has acres of hearings. So we had a flawed
10 process and we enacted what was called the
11 Administrative Procedures Act. And it had, as a part of
12 it, a judicial piece, if you would. The thought was
13 that you ought not to be having this agency that
14 regulates you be your judge and jury. Point of fact,
15 grand jury judge prosecutor. And that was in 1977. And
16 their complaints, that is an agency's complaint under
17 that process, had to be tied to some sort of formal, if
18 you will, court process. We had the administrative
19 court. My recollection is that the personalities that
20 were on that court did not lead it in is vigorous kind
21 of way and there is sort of a typical reaction by
22 administrative agencies, whatever departments are
23 involved, to protect their own turf. So they whittled
24 away at it.

25 One of the great things about Maine and the

1 legislature is you can enact it but you can also whittle
2 it away. And the Administrative Procedures Act got
3 whittled until many state agencies convinced the
4 legislature that they ought to have an exception for
5 whatever purpose to the administrative court process.

6 Most problems we have between A and B,
7 whether its a sovereign and a citizen or two citizens
8 gets on the courtroom setting. Well, why is that?
9 That's so you will have a dispassionate trier of fact.
10 The way it works nowadays -- and I will leave with you a
11 really good article that John Patterson who is a lawyer
12 in Portland forwarded to me as deputy attorney general
13 wrote about Maine's Administrative Procedures Act and
14 the way agencies or many of them operated. He called
15 them kangaroo courts; his phrase, not mine. But after
16 having practiced law for 48 years, I told people I don't
17 need to know a lot of law. My rule is what I call a Red
18 Skelton rule, the old comic who used to say, "you know,
19 this just don't look right to me." And it just don't
20 look right to me when you have an agency that's the
21 complainant, the trier of act and numerous personage
22 from the attorney general's office in the room acting as
23 prosecutor, counsel for the hearing officer and so
24 forth. We slid back away from the original good thing
25 we had going as far as the rest of us are concerned

1 because most people, I think we would all agree. If
2 you're a licensee, whether it's drivers or you're a real
3 estate person, lawyers have their own system, or a
4 doctor, you have a right to a fair kind of a process.
5 This isn't fair. I will give you an example.

6 I represented a fellow from up country who I
7 think was a real estate appraiser, had to have a
8 license. And the board that was involved, this was a
9 number of years ago, investigated him and prosecuted
10 him. And guess what? The complaint was filed against
11 him -- they designated one of their members as a
12 complaint officer. The complaint was filed against him
13 by the chairman of the board. When I appeared at the
14 hearing, I said I'm assuming that the chair here, the
15 complaint officer, wearing two hats, is going to recuse
16 himself from the hearing. Oh, no. A big flap ensues,
17 they have an executive session which I asked to go to
18 and I'm never silent and quiet on behalf of my clients.
19 I insisted and they wouldn't let me go. So now we're
20 going to have a hearing where they charged him, the
21 chair of the board is going to run the meeting, he's
22 going to vote, he was the complaint officer, and the
23 Attorney General's Office shows up representing the
24 board. That isn't fair, not even remotely fair. That's
25 101 third day of law school stuff.

1 You have other agencies that seem to do
2 better. It depends on the sense of the board, sometimes
3 their membership and so forth. I have had some hearings
4 in which even though somebody would recuse themselves --
5 pardon me -- they couldn't shut up during the hearing,
6 or what amounted to that and kept suggesting things to
7 other members. Totally inappropriate, they ought to
8 leave the room. If you're going to have a fair system,
9 let's have a fair system. Somebody is going to tell you
10 that this is a bad idea because it would cost money,
11 we'll try it in the district court. There are solutions
12 to that problem. There is no solution to Maine's money
13 problem, that's very clear. But the solution to the
14 problem is let's get it in place, structured and get it
15 moving forward. Because what I see happening, and John
16 Patterson noted in his article here, and he's done
17 plenty of these. What we see happening is arguable
18 legalities but on a policy basis some very bad judgments
19 made. How would any of us like to get tried in a court
20 system, whether it's civil or criminal, by the same
21 people who indicted us? Now, does that make any sense?
22 Now, the AG's office sometime will have two or three
23 people in the room representing various interests and
24 tell will tell you that they have created a Chinese
25 wall. Pardon me, that is bunk, substitute any word of

1 your choice there. But that is not right because in the
2 final analysis, the attorney general represents the
3 people of the State of Maine and he or she ought to be
4 able to assure the people that there is going to be a
5 fair hearing.

6 Once when I was a more impetuous lawyer than
7 I am now, a young lawyer, I represented the Department
8 of Revenue, then the Bureau of Taxation. I thought a
9 taxpayer was getting a bum deal. He was unrepresented
10 by counsel, we had an administrative hearing. And I
11 finally said, John, wait a minute. This is your client,
12 this Bureau of Taxation. He's not your client. And I
13 wasn't feeling good about what was happening. He was
14 getting railroaded, I thought. So I called the hearing
15 to an end. I didn't have any authority to do that, but
16 I said, "sir, if I were you, I would pack my bag and I
17 would leave this room." And then I got the hearing
18 done, went over to the attorney general's office and
19 said to then Deputy George West -- he was a wonderful
20 mentor. He was an extraordinary lawyer. I said,
21 "George, I want to resign because I think I did the
22 right thing but this creates a problem for the office.
23 Just give me the paper and I will resign." I felt as a
24 lawyer, and I still feel strongly, this government,
25 whatever government, needs to treat people fairly and

1 evenhanded. I don't see that in many of these hearings.
2 I see it in some. Again, it may depend upon the
3 assistant AG or the particular members of the board. So
4 you ought to think about whether you have a different
5 process than we have right now because one of these
6 days -- and nobody has ever litigated that, by the way.
7 There is reason for that. There's not enough money to
8 do it. Frequently you're representing some business
9 person, small business person, a real estate broker
10 licensee, a real estate appraiser licensee, a physician.
11 That's a whole different kind of a world. But it really
12 is a process that John Patterson called kangaroo court,
13 and he's right. It isn't fair and it offends at least
14 my sense of injustice and I tend to be fairly
15 conservative about such matters but people are entitled
16 to fundamental fairness of government. Most of this
17 government, Maine's, is pretty fair, it's pretty open.

18 I just concluded a difficult legal issue
19 with the Department of Public Safety, and I thought I
20 got treated very fairly and I don't think the state got
21 treated unfairly either. It's possible to do it.

22 So my thoughts are that you ought to change
23 the system and say to those various agencies that are
24 under the Department of Professional and Business
25 Regulation, take all of your cases over to the district

1 court and let a judge hear them. Let's not put the
2 burden of investigation, complaining, fact finding on
3 the board itself because you're relying there on some
4 pretty slim kinds of principles to get people a fair
5 hearing.

6 All of the appellate rights now are found in
7 the Department of Professional and Financial Regulation.
8 Those need to be changed. And I should tell you too, I
9 have even been cautioned by board counsel or by the
10 chair of the board, look, don't say too much to the
11 board today, don't give them a hard time, because
12 they're not lawyers and we're not sure we like lawyers.
13 I didn't start doing this because I was looking to be
14 the most popular lawyer in town. I need to represent
15 people without fear of retribution, and I never really
16 wanted to be run out of Dodge by any issue.

17 The system is at best informal, pretty
18 sloppy and really doesn't guarantee that there is going
19 to be a fair shake. As I say, that's not true of all
20 boards and commissions. But the system, I think, given
21 Maine's reputation for fair play, we're pretty fair
22 people. It doesn't do us any kind of compliment to have
23 this system hanging around in this day in age where you
24 ought to have a more modern kind of a system. You can
25 do it simply, I think, by changing the law so that you

1 file these cases in the district court. Let the state
2 then come in -- the state has a complaint, present it,
3 prove it, let the other side decide what it is they want
4 to do.

5 You get more due process today out of that
6 speeding ticket that Chris was talking about than you do
7 if you're about to lose your license before some board
8 or agency. That's your livelihood. You can stand a few
9 points on your license.

10 So my suggestion to you folks, and I talked
11 to Nancy Smith about this this morning, is that
12 licensees are entitled to a fair hearing. We ought not
13 to encourage a system which for some convenience on the
14 part of the department exists. Our people are entitled
15 to have fair hearings. I don't care how difficult it is
16 for the sovereign to make its mind up. All I ask for of
17 the sovereign is to be fair, and it ought to do that as
18 sort of a matter of course.

19 Those are my thoughts on that. I would be
20 glad to take any questions you have.

21 CHAIRMAN STANLEY: Thanks very much, Mr.
22 Doyle.

23 We're hearing every year pretty much that
24 the state court system is already overloaded, taxed to
25 the max in terms of their ability to take on. Do you

1 think that they are likely to come in as witnesses when
2 there is a proposal of this scale?

3 MR. DOYLE: Sure.

4 CHAIRMAN STANLEY: Because I would think
5 that this would add to their workload considerably if
6 you put these things into the district court.

7 MR. DOYLE: It will so the legislature then
8 will need to make a policy judgment which it really is
9 functionally competent to do as to whether the fairness
10 is importance or the dollars are important. I think the
11 courts will come in and say, hey, we're overworked now.
12 I think they probably are. I think they need some more
13 money, but I would use this as an opportunity to put
14 together a comprehensive system, see if there are any
15 savings involved, but I certainly wouldn't shy away from
16 it. You will hear that. My solution to that would be
17 to do what we did for the state police a number of years
18 ago. We helped them increase their retirement. That
19 way you can do, if you will, a little piloting and a
20 little project work before you get it into place. But
21 that I would say -- the chief justice -- and I have a
22 wonderful reputation -- but I would say to her what
23 comes first, justice or dollars? And we'll have a
24 wonderful debate on it.

25 CHAIRMAN STANLEY: She probably believes

1 that justice comes first but she's --

2 MR. DOYLE: Constrained by her --

3 CHAIRMAN STANLEY: -- talking about dollars
4 every time I hear her.

5 MR. DOYLE: And that is true and she
6 struggles. And I will tell you this: In the great
7 scheme of things, Maine's court system is highly rated
8 as compared to other states. It's a wonderful system.
9 We only elect probate judges, we don't get into that
10 thrash. We have had some pretty fine jurors in the
11 state and currently still do.

12 CHAIRMAN STANLEY: Deputy Chair Snyder.

13 MS. SNYDER: Thank you, Mr. Doyle, for your
14 testimony.

15 As somebody who has lived through the
16 nightmare of exactly what you have talked about, I am
17 interested to hear your perspective, and I need to take
18 it in. Thank you.

19 MR. DOYLE: You're welcome.

20 CHAIRMAN STANLEY: All right. We will go to
21 Ed Phillips now.

22 MR. PHILLIPS: John, in reading the bill
23 that Nancy submitted, it doesn't appear it would go to
24 the district court accept on appeal from the
25 administrative law judge.

1 MR. DOYLE: That's right.

2 MR. PHILLIPS: Basically it would be a
3 separate -- and the qualification shall be legally
4 trained preferably. So basically if we formed this,
5 somebody could call up and say, John, would you like to
6 be an administrative law judge on a case and not be
7 overloading the court system.

8 MR. DOYLE: You could do it that way. That
9 was John Patterson's suggestion. I think we sent it to
10 the district court. But you could certainly call up
11 John Benoit who is a retired judge -- he and I went to
12 law school together, former deputy AG -- and say how
13 would you like to serve from time to time on a per diem
14 basis as a judge. So there is another solution that was
15 a good comment.

16 MR. PHILLIPS: That was a solution that I
17 was looking for when we first put this in. Because also
18 I think that you're going to find the boards are going
19 to change their procedures and there will be a lot more
20 negotiated settlements with minor penalties when they
21 know that they have to comply with the laws of evidence
22 and discovery and everything else.

23 MR. DOYLE: Well, I come from a law
24 enforcement family. I'm the only lawyer in three
25 generations of Irish cops. And I know they had some

1 interesting views about me. I know that when you're
2 headed for a hearing and you know there is a real judge
3 there, what you suggest is absolutely what's going to
4 happen. You're going to get rid of a number of these
5 cases by negotiating them instead of being in this God
6 awful situation today where your client gets charged and
7 you go to a meeting with the board or a hearing and they
8 say, well, we have a complaint and a consent decree all
9 drafted. Right. Would you mind signing the consent
10 decree? Sure, of course you would.

11 I think you will have a lot of cases settled
12 and some of the judges will send messages like they
13 frequently do, this is not a great case.

14 MR. PHILLIPS: We have had a lot of
15 correspondence come to us from people who felt that they
16 have been treated very badly by different agencies and
17 boards. And, of course, there is always two sides to
18 every story. But I think if it came in front of a
19 judge, an administrative law judge, you would get both
20 sides of the story and you would get an honest solution.

21 MR. DOYLE: You're right. And as John
22 Patterson points out in his excellent article here, most
23 of the evidence that you have in this area is anecdotal.
24 Nobody has done a study, and studies may be overworked
25 these days anyway. People have brains and intuition and

1 they need to use them. But there is clearly a problem.

2 MR. PHILLIPS: The other thing I ask,
3 anybody that has an interest in this, it's LR-2457. You
4 need to follow it so that you appear at the legislative
5 hearings and offer testimony because I'm sure the boards
6 of the agencies are going to be there offering counter
7 testimony.

8 MR. DOYLE: They will, and what they'll tell
9 you is this will be a great administrative burden for
10 us. My comment for them is if you're on the board -- I
11 have been on a bunch of boards, currently serve on some
12 state-oriented boards and have -- you accepted the
13 responsibility; deal with it. We're not here running a
14 government to see how short we can make the day or
15 minimize the problems; we have to deal with them. The
16 governor deals with them every day. I may be fairly
17 tough about this but if you serve on a board, deal with
18 the board's problems.

19 MR. PHILLIPS: Deal with it or get off.

20 MR. DOYLE: Or get off, yeah. I have been
21 on boards I got off and I wasn't asked. Always a
22 concern. But I simply decided that wasn't for me. If
23 it's not for you, let somebody else serve. Part of your
24 citizenship responsibility.

25 MR. PHILLIPS: That's the only thing that I

1 have. I think there are some people here offering
2 testimony on how they have been treated by agencies or
3 boards. It's important that you follow this bill and
4 give it support.

5 CHAIRMAN STANLEY: Do we know, Ed, if that
6 bill will be heard by the BRED committee?

7 MR. PHILLIPS: I understand it's being heard
8 by the BRED committee. I couldn't swear to it but I
9 believe it is.

10 MR. DOYLE: That's correct.

11 CHAIRMAN STANLEY: So it hasn't been
12 scheduled for hearing at this point?

13 MR. PHILLIPS: Not to my knowledge, no.

14 MR. DOYLE: I talked to Representative Nancy
15 Smith this morning. It is going be heard sometime by
16 BRED sometime in the middle of January she said.

17 CHAIRMAN STANLEY: Okay.

18 MR. PHILLIPS: Thank you, John.

19 MR. DOYLE: You're welcome.

20 CHAIRMAN STANLEY: Then we go to Marie
21 Emerson.

22 MS. EMERSON: Thank you, Mr. Doyle. Your
23 story was so heartwarming. There are so many people
24 that will talk the talk but not walk the walk. And when
25 you returned your resignation in after that revenue

1 service, I think that is marvelous. It says that you
2 are truly a man of honor to me. And what you're saying
3 here should be listened to closely.

4 MR. DOYLE: I appreciate that. I said to
5 somebody the other day, I'm 71 now, practiced law for
6 48 years. I have always been very direct. I thought I
7 was getting more direct but somebody reminded me I
8 probably wasn't. I have been that way all along. I
9 think you have to do that as a lawyer, stand up for what
10 you think.

11 MS. EMERSON: I thank you for that.

12 You talk about that we have to structure
13 something new and move forward. And your suggestion in
14 changing the -- sending it to district court. With all
15 of the rules that we have in place, ethical rules,
16 conflict of interest rules, they're not working, I
17 guess, is what you're saying, they're just not working,
18 and this is the only way to do it is to put it -- is
19 there other alternatives to that? Other states, what do
20 they do?

21 MR. DOYLE: I think other states have their
22 own administrative court system, they have a separate
23 system, separate and apart. Or you could do what Ed
24 suggests. There are ethics and then there are ethics.
25 I sort of think lawyers ought to do their oath once a

1 year. Once you get into the trenches, you kind of lose
2 sight of why it was you got in there in the first place.
3 And I don't think anybody is badly intentioned, I think
4 it is a more comfortable system. And we all get around
5 and decide what's going to happen to old Harry. Not the
6 way the system works -- should work.

7 MS. EMERSON: Thank you for being true to
8 your oath.

9 MR. DOYLE: You're welcome.

10 CHAIRMAN STANLEY: Mr. Van Perry.

11 MR. PERRY: I don't have any new questions.
12 I was just wondering, we've been talking about cost. Is
13 there a fiscal note that's attached to this bill?

14 MR. DOYLE: Oh, there's got to be a fiscal
15 note on this bill, I'll bet, before it gets all done.

16 MR. PERRY: Okay.

17 MR. DOYLE: The court would want one put on
18 there. If I were advising the chief justice, I will
19 tell her this is a great way to get some more judges.
20 The problem is going to be there is very little surplus
21 money this year, and we're all having to deal with that.
22 The social services agencies will be cut substantially
23 so there may not be any money to do it. But there are
24 two pieces to every piece of legislation. One is what
25 the substance is and the other is what does it cost. It

1 doesn't have to be effective 90 days after, it can be
2 effective on a delayed date. You might even ask the
3 chief justice how she would recommend that you handle
4 this. In other words, you can get people together and
5 get one of those famous coalitions going when we have a
6 community of interest. Somebody wants to change the
7 law, who is involved, you need to talk to those people.
8 You can come up with a solution, I think, but you may
9 have to delay its effective date if there is no money.
10 You may find -- I don't think you will -- that there are
11 enough fines or penalties to support it but I tend to
12 think not.

13 MR. PERRY: All right, good, thank you.

14 MR. DOYLE: You're welcome.

15 CHAIRMAN STANLEY: Beth Shissler.

16 MS. SHISSLER: Pass. Thank you for your
17 time today.

18 MR. DOYLE: You're welcome.

19 CHAIRMAN STANLEY: Staff.

20 MR. MERRILL: No, thank you.

21 Thank you very much.

22 MR. DOYLE: You're welcome.

23 CHAIRMAN STANLEY: People in the audience,
24 anybody want to pose a question to the witness?

25 If none, we will thank you and recuse you.

1 Thank you very much.

2 I think we have at least two or three more
3 witnesses to hear. We will take about a 10-minute break
4 here for the benefit of the board and anybody else who
5 might want to go out for a bit. I understand the cafe
6 downstairs closes at three if you need to get coffee or
7 anything. We will resume at 5 minutes to three o'clock.

8 Thank you.

9

10 (Whereupon, a brief recess was taken.)

11

12 CHAIRMAN STANLEY: Marie Emerson, would you
13 be kind enough to introduce our next witness, please?

14 MS. EMERSON: Yes.

15 David Clough who is the head of NFIB which
16 represents 3,800 small businesses throughout the State
17 of Maine. David is going to fill in a little background
18 about himself and so we will talk about some of the
19 needs of small business.

20 MR. CLOUGH: Good afternoon Chairman Stanley
21 and Vice Chairman Snyder and members of the Regulatory
22 Fairness Board. I appreciate and welcome the
23 opportunity to speak to you this afternoon. I will give
24 just a little bit of additional background.

25 Tom Merrill had asked me for information a

1 couple of days ago. And as I was coming up this
2 afternoon, I realized that I had neglected -- I had
3 started to respond to him but I neglected to complete it
4 and push the little send button on the e-mail so
5 apologies for not getting that to you.

6 I have represented NFIB and advocated for
7 small business since January of 1982 here in Augusta
8 with a small two-year break in the mid-90's after the
9 session from hell when I was kind of worn out from the
10 scene here.

11 I'm a native of Bangor. I graduated from
12 the George Washington University in Washington D.C. and
13 worked on Capitol Hill for Congressman Bill Cohen for
14 several years back in the 1970's before returning to
15 Maine. And if you can believe it, I went from
16 Washington D.C. to Presque Isle for one winter which
17 seemed like an entire lifetime and then ended up in
18 Bangor about six months later. When I left Presque
19 Isle, there were 60 inches of snow on the ground, and it
20 was the end of February. And I had never seen that much
21 snow in my life and yet I had grown up in Bangor so I
22 was happy to move south. I know many of you don't think
23 of Bangor as south, but when you have been up to Presque
24 Isle and in the county, anything is south practically.

25 I have served on a variety of boards and

1 commissions, governor's advisory committees and so forth
2 too numerous to list. And I have testified at
3 congressional hearings, I have been on forms of panels
4 all of times speaking for small business.

5 Now, I don't pretend to have, quote, the
6 answer or the view. What I have found is small business
7 owners are a very, very diverse group and that's
8 actually their strength. And when NFIB asks questions
9 of its members on surveys and issues, it never receives
10 a 100 response. As proof of that, a number of years
11 ago, I asked a question which was a loaded question, did
12 they think there should be a prohibition on government
13 competing against small business. And there were
14 three percent of the people that said they were either
15 unsure or, yes, they should be competing. I thought how
16 could that be? I must have written the question wrong
17 or something. What kind of business are they in that
18 they would want the government competing against them?
19 But to underscore, again, it's the diversity that's the
20 strength of the small business sector. It is the energy
21 and diversity, the strength of individual small
22 businesses, the owners, the people behind them.

23 I have a few comments that I want to make
24 this afternoon. In part, I just wanted to use the
25 opportunity to introduce myself. I apologize for not

1 being able to make your meeting this morning. In
2 previous meetings, I look forward to working with you
3 and I look forward to helping you with the job that you
4 have been assigned.

5 I had a role in the job that you have been
6 assigned a number of years ago. State Senator Marge
7 Kilkelly of Lincoln County called me and said she had a
8 constituent with a federal regulatory problem and what
9 could I do to help? Well, it turned out that the
10 Federal Regulatory Fairness Board was holding a meeting
11 in New Hampshire just a couple of weeks later. And she
12 and I went over and Larry Snyder, who, at that time,
13 owned King Eider's Pub in Damariscotta was the
14 individual. The long and the short of it, his
15 experience was very worthwhile because the
16 representative from the U.S. Department of Labor from
17 Washington was there. His situation was so outrageous
18 that it was clear to board members that something had to
19 be done. And, like you, they didn't have any power to
20 compel an agency to take any action. There was a forum
21 for people to come and be heard and call attention to
22 their situation. And in a span of two weeks before
23 Labor Day, the U.S. Department of Labor had offered a
24 settlement. Like what John Doyle was saying, we'll
25 reduce your fine from 14,000 to 7,000 or 8,000 as long

1 as you say you're guilty. And when Larry Snyder in so
2 many words told them where they could go, they ended up
3 faxing him a letter and saying they dropped the matter
4 entirely. Marge Kilkelly was so impressed with that
5 process that she said she wanted to do something like
6 that at the state level and so we created the Regulatory
7 Fairness Board. At the time it was five members.

8 The idea is not that there is so much going
9 on that you have to spend all of your time holding
10 meetings and hearing complaints. It's not necessarily a
11 bad thing if you don't hear a lot of complaints. It is
12 also telling when you don't because there is a fear
13 factor out there. People are concerned about coming
14 forward publicly and pointing their finger at a specific
15 agency and a specific action. All of that entails fear
16 of retribution, fear of more problems and people are
17 reluctant to be critical publicly of somebody. They
18 might privately but not critical publicly. So that's
19 something that occurs in Maine and elsewhere.

20 I wanted to just lay out a couple of things
21 and it's going to be a little bit different from some of
22 testimony that you have heard previously. I don't plan
23 to speak for very long.

24 One is what I call the Maine situation,
25 Maine's economic situation, its revenue situation and

1 its small business situation.

2 I brought a handout that shows the economic
3 and revenue situation. I didn't include something on
4 the small business and I will follow up -- can follow up
5 with written material. But it's economic situation in
6 -- I think if I will just hand it out right now.

7 The point of the handout which is something
8 I did based on the state's consensus economic
9 forecasting commission. On one side is the economic,
10 the other side is the revenue forecasting. The point is
11 to underscore the importance and the value of your
12 mission, both your statutory mission and the mission
13 that was assigned to you by Resolve 110 of this past
14 legislative session.

15 Maine's economic picture -- Maine has lost
16 jobs in a recession. We expect that to happen. Maine
17 is going to gain jobs coming out of a recession, we
18 expect that to happen. But when you compare 2005 before
19 the recession to 2013 after the recession, Maine will
20 have very few jobs more than it did in 2005. But all of
21 the jobs that it's expected to have, net new jobs, are
22 going to be in three economic sectors. Nine sectors
23 will actually have fewer employment opportunities in
24 2013 than it did in 2005. Now, part of that is because
25 the recovery of the recession is supposed to take longer

1 than just a couple of years. And Tom Merrill knows
2 better than I on that. There will be a recovery, but
3 the jobs are going to come more slowly. So 2013 is as
4 far as they go in the economic forecast. If they go out
5 to 14, 15 or 16, you will see that more jobs are being
6 added. But clearly Maine has a job problem. It is
7 going to need new jobs.

8 President Obama, in a recent job summit, the
9 small business administration in research publications
10 of theirs, the president's counsel of economic advisors,
11 the secretary of treasury in his announcements and
12 others say they expect virtually all of those new jobs
13 are going to come from existing small businesses and
14 small businesses that will be created. But virtually
15 all of the net new jobs are going to come from small
16 business.

17 In Maine, that is more likely than ever
18 because Maine on a scale of -- not a scale but when you
19 group businesses according to this size like from less
20 than 10 employees, 10 to 24, 25 to 99 and so forth, in
21 the category of less than 10 employees, Maine ranks
22 ninth highest in the country, the percentage of its
23 workforce in businesses of that sort. In a category of
24 10 to 24 and 25 to 99 employees, Maine ranks last in the
25 country, 51st. That is important because that's where a

1 lot of your growth comes from.

2 MS. SHISSLER: Could you repeat those
3 statistics?

4 MR. CLOUGH: Yes, and I apologize for not
5 having it and I will get it for you.

6 In the category of less than 10 employees,
7 Maine ranks ninth. I forget what date this is. I think
8 this was 2006, 2007 and it is taken from a federal
9 government web -- in the category of 10 to 24 employees
10 and 25 to 99 employees, Maine ranks 51st, last; 51st
11 because they included the District of Columbia. That's
12 a category where you get a lot of your net new job
13 growth, your plus one job growth. And Maine is not well
14 positioned there for a variety of reasons, some of which
15 are beyond our control, no doubt. And I don't know, I
16 couldn't specify all of our reasons because it's not
17 something that's really been looked at but it's the
18 reality that we're affected by.

19 The economic situation, the small business
20 situation, also affects the state's revenue forecasting
21 situation. And that's the back side of the handout
22 where you will see, and this is from the revenue
23 forecasting committee that's issued a report on
24 December 1st of this year. It's a semiannual report.
25 And you will see that general fund revenues in 2013 are

1 expected to be about \$2.9 billion a year. That is about
2 equal -- it's actually a little bit less than where
3 general fund revenues were in 2006. So while the state
4 will start gaining revenues as we come out of the
5 recession, there will still be less money available,
6 according to this forecast, than there was seven years
7 ago in 2006 when you compare 2013 to 2006. The best way
8 to improve that situation, apart from efficiencies in
9 government spending is to improve the economy. And the
10 best way to improve the economy is to ensure that there
11 is regulatory fairness and that people's problems get
12 heard and addressed and resolved in an appropriate
13 manner. And a lot of the work that your group is looked
14 upon to accomplish by the legislature and the business
15 community directly affects the revenue situation in the
16 state, the economic situation in the state.

17 Now, I'm sure each of us wishes we had a
18 magic wand that we would just wave and fix everything
19 and make Maine a best practices state rather than a
20 state that people point to and say, well, you don't want
21 to be like Maine.

22 Just an aside, this past year I have had a
23 opportunity to represent NFIB in the State of New
24 Hampshire, the New Hampshire legislature in Concord.
25 And it has been a fascinating experience. I ran into

1 somebody from Maine who spent a lot of time in Maine and
2 is now over in New Hampshire. And they said well, one
3 of the big things you will learn that is in New
4 Hampshire, they love business and hate government but in
5 Maine, they hate business and love government. And I
6 will have to tell you in some issue we have worked on,
7 they kill those issues in committees over there where in
8 Maine they would end up on the floor if not the
9 governor's desk. The similarities are that the states
10 both have a democratic governor, democratic house and
11 democratic senate but their approaches to the issues is
12 vastly different, that they're very, very concerned
13 about the effect on business and the effect on the
14 state's economy. I hear questions and comments that I
15 have not heard in all my years of lobbying here in
16 Augusta. And it shows when you look at the economic
17 performance of the two states.

18 Now, I'm also reminded that Maine is a very
19 special state. I can't hear small business owners
20 saying we want to be like Michigan before the crash. We
21 want to be like Washington or California or Texas. They
22 want Maine to be like Maine because they're very proud
23 of Maine. And a number of years ago in the Downeast
24 Magazine, there was an article about Monhegan Island and
25 interviewed a man named Stanley who was one of the -- I

1 think -- almost aboriginal families out there,
2 indigenous families. And he said the things that makes
3 Monhegan unique is that it's a hard place to get to and
4 a hard place to live on and that's just the way we want
5 it. And to some degree, we don't want Maine to be a
6 pushover. But to some degree we have to be practical
7 and we have to assure that there is opportunity for
8 people, both young and older and that we can meet our
9 needs.

10 When you look at the economic figures that
11 showed increasing percentages to the economy in this
12 state is paid for by taxes, transfer payments and
13 insurance payments. We can't have a sustainable economy
14 based on those factors. We need a more broad-based
15 private sector economy than we have.

16 With regard to regulatory fairness, the
17 approach of agencies, I don't hear specific complaints
18 as much as I hear generalized complaints. So I cannot
19 bring to you specific anecdotes. And I would even be
20 reluctant to do so. I would prefer that the person
21 speak. I have heard people say a friend of mine that
22 has started a new business in Winthrop a couple years
23 ago who is a successful serial entrepreneur said that he
24 took a couple of years off and he just shook his head
25 and said he couldn't believe how difficult it was

1 nowadays to start a business in Maine. He just couldn't
2 believe it. And he said if I wasn't so far into this,
3 I'm not sure I would even do it. It's one of those do
4 you slog on to try to make your investment work or do
5 you cut your losses and go? And he's born and raised --
6 he's a diehard Mainer and he's not a Reagan republican
7 or a Goldwater republican or anything else like that
8 either.

9 One of the things we hear and are seeing at
10 the federal level is the issue of confidence versus
11 uncertainty. We can't do anything about the federal
12 regulatory issues but at the state level you do hear
13 from small business owners who say they're not sure what
14 kind of answer they're going to get, they're not sure
15 when they're going to get that answer.

16 A friend of mine started a new specialty
17 food business as a side hoping to develop it into a day
18 job but it's sort of a side thing. He said it took
19 months to get a health inspector to approve it because
20 there are virtually no health inspectors. Things like
21 that, you can get all of your other permits but it is as
22 simple as you can't get a food product on the shelf to
23 the public without the process being inspected by a
24 health inspector, the state agricultural department and
25 approved.

1 We have a regulatory impact analysis law
2 that I helped amend a couple of years ago with the Small
3 Business Administration regional advocate out of Boston.
4 That requires -- and I will send this to you, but it
5 requires agencies to consider the effective regulations
6 on businesses, to quantify that, describe it, identify
7 in general terms, the businesses. You cannot find --
8 you would be hard pressed to find anywhere in the
9 rulemaking notices, anywhere in the rulemaking
10 discussion where they actually do that.

11 Now, they'll tell you that Maine is a small
12 business state and, of course, they're sympathetic and
13 so forth towards small business. But when one comes to
14 thinking about it, quantifying it, describing it,
15 considering what the alternatives would be. Not the
16 alternatives of no regulation and what they're proposing
17 but the alternatives of this way versus that way, you
18 would be hard pressed to find it. And that's something
19 that's a project of mine for the year 2010 is to get
20 something done on that. But it's an example of where we
21 have the law but we don't have the compliance. We have
22 the law and the Administrative Practices Act which is a
23 part of what John Doyle was talking about but we don't
24 have the compliance. It's not even on the checklist of
25 things that they have to tell the Secretary of State and

1 the attorney general that they have considered.
2 Fortunately the attorney general is somebody who I
3 worked with on small business issues, she served in the
4 legislature. And I have no doubt I'll get a good
5 hearing in her office when I bring this to her
6 attention. But it is also something where this Board
7 might want to take an interest in, not to help a
8 particular business group but as part of regulatory
9 fairness and as part of improving the relationship
10 between the regulated community businesses and the
11 regulators.

12 Another aspect, I expect the NFIB members
13 will be supportive of the administrative law judge bill.
14 There are a number of states that have something like
15 that or the administrative -- for licenses of
16 occupations or professions or they have something like
17 that for some other issues that businesses might get
18 caught up in where you can go to an administrative court
19 level before you go all the way to a district court or
20 superior court level which is more time consuming and
21 more expensive and also competes against all of the
22 other responsibilities that we have put on district
23 courts and superior courts.

24 Paperwork is something that you have heard
25 about. That's a complaint that I hear about. That's

1 something that several years ago there was a legislative
2 committee that had a meeting on that. A restaurateur
3 from Fort Kent sent them a two-page letter about all of
4 the licenses and permits that they have to carry in
5 order to be in operation more like a grocery store and
6 the legislators were astonished. Unfortunately that
7 astonishment didn't translate into change because the
8 reality is still there. The reality is not that we
9 should do away with protecting the public but it's how
10 we approach it. Is it necessary to have so many
11 separate licenses, can those be consolidated? Is it
12 possible to have a consolidated application for a number
13 of licenses? The State of Washington and so many other
14 states have a consolidated license application. You
15 apply and then on your license it lists all of the
16 things that that license is for rather than having to
17 fill half of your wall. Well, two-thirds of your wall
18 is filled with Labor Department posters. What you have
19 left, you have to squeeze in these other things too.
20 It's all there, just on one certificate. It doesn't
21 take away the authority, responsibility and necessity
22 for other agencies to do their part but it is a way to
23 simplify and consolidate and make the paperwork process
24 a little bit easier on the regulated community side.
25 Unfortunately in this state, there is too much concern

1 about the effect on the public sector and not enough
2 concern about the effect on the private sector. And
3 that was part of the point that the person in New
4 Hampshire was making to me. I joked as kind of a
5 cynical comment but I joked a while back about New
6 Hampshire was going to change its license plate to live
7 free or move to Maine. I thought it was clearly a joke
8 but unfortunately somebody said really because Maine has
9 such a reputation that they thought that might actually
10 be true. If you get on the New Hampshire economic
11 department website or something like that, they
12 virtually have that. They're very proud of comparing
13 themselves and contrasting themselves to Maine and other
14 states because they're very interested in business.

15 Chris Hall mentioned that operating loss
16 carried -- bonus depreciation. I want to mention an
17 issue -- this is not in your purview -- that affects us
18 here. Section 179 expense and conformity we're under
19 federal rules you can write off up to \$250,000 of an
20 investment in one year. In Maine you can only write off
21 25,000 and you have to depreciate and pay taxes at one
22 of the highest rates in the nation on the remaining 225
23 over the life of the product, over the five-year life of
24 the product. Plus your accountant has to, or whatever,
25 you have to report differently on your tax return. You

1 can't just carry it over from your federal return to
2 your state return and be done with it. You have to
3 recompute it on your state return. I have accountants
4 who tell me it costs more in compliance costs than the
5 state's actually receiving in tax because they're not
6 conforming. It may be a little outside of the purview
7 of this committee, at least the core purview, but it
8 does go into the whole realm of costs and attitude.
9 Now, it's a money issue, but it's a money issue for the
10 private sector too.

11 Just a few remaining comments. One is that
12 there is a lot of concern about the economy of the past
13 in this state, a lot of concern. We have heard elements
14 of that this afternoon.

15 What I urge people to think about is hanging
16 onto the past isn't going to get us into the future,
17 that we have to think about the economy of the future.
18 And then there is a temptation among political leaders
19 to think, well, I want to be the green economy of the
20 future, I want to be the yellow economy of the future, I
21 want to be this, I want to be high tech or something
22 else like that. Every single governor in every single
23 state is saying that. And the reality is you can't pick
24 and choose very easily. It's been tried, it doesn't
25 really work very easily. And people as qualified as a

1 Harvard professor speaking on competitiveness says you
2 can't do it. Knull and Bushnell a successful high-tech
3 entrepreneur out in California back in the 90's said you
4 can't do it. The one thing that's missing is what's
5 wrong with creating an opportunity so the individuals
6 like yourselves can have a chance to be successful
7 rather than somebody saying I will work with you, Mr.
8 Stanley but not with you, Ms. Snyder or vice versa
9 because I like the business you're in but I really don't
10 care about the business you're in. If you're hiring
11 jobs, creating opportunity, paying taxes and helping the
12 economy, what's wrong with everybody being helped
13 instead of being selective about it?

14 And I have heard -- Matt Jacobson commented
15 from his perspective and the people he works with, he's
16 heard good things about the training programs. There
17 was a survey done with an industry a couple of years ago
18 about the various training programs and they did find
19 that there was a number of the people responding. They
20 weren't sure if the training programs worked that well
21 for them, I will put it that way. And I have heard a
22 number of small business owners when it comes to the
23 Department of Economic Development that have you had any
24 dealing with them? No. If you have had any dealings
25 with them, how has it gone? Well, they don't really

1 understand me or my business. It takes too long to help
2 them understand or to do something to get them up to
3 speed so that it works so there are elements like that.

4 My last comment is the question was asked
5 what one thing could be done short of waving a magic
6 wand.

7 In 1990 when I wrote the column about if
8 every small business could create just one new job that
9 would wipe out Maine's unemployment problem and I listed
10 ten things Maine could do. The very last thing I listed
11 was just one word, listen. The column was directed to
12 political leaders, the governor and legislature; listen.
13 And I explained that what I hear most from small
14 business owners is they don't feel Augusta, the
15 governor, legislators, regulators listen to them.
16 They're not always looking for agreement, they're at
17 least looking for attention. And I have received more
18 positive feedback on that one word listen than I ever
19 would have imagined. It overshadowed all of the other
20 things. As a part of that, and that's part of what your
21 group will be doing as it goes forward.

22 Several years ago, speaker of the house John
23 Richardson came up with a small business bill of rights
24 and, yes, there was a political angle to it for his
25 caucus and probably for himself too, but he said, well,

1 what more can I do? I said, well, what would really
2 make a difference is going out, holding meetings,
3 inviting business people to come and talk to you about
4 stuff and they did that. In a number of locations they
5 got big turnouts, fairly decent turnouts, 10, 15, 25,
6 30, 50, whatever, business people. They went around the
7 table and it was astonishing because the diversity of
8 the people who showed up and the similarity of what they
9 had to say, people in different types of business, of
10 different political persuasions because I knew some of
11 them but they all were very -- they all had a lot of
12 agreement but they also learned a lot about what they
13 were trying to deal with and what it would take to help
14 them get over a hump, a crack to step across almost like
15 from one plank of the business to another.

16 With that, Mr. Chairman are my comments. I
17 apologize if I rambled a little bit. I will send you
18 some written information. As I said, on behalf of NFIB
19 members, small business owners, I appreciate very much
20 and applaud each and every one of you for your
21 dedication in serving on this and look forward to
22 working with you. Thank you.

23 CHAIRMAN STANLEY: Thank you, Mr. Clough.

24 We remember Larry Snyder, he was our first
25 vice chairman when Marge Kilkelly chaired this board.

1 Larry had to drop off after a year or so because for
2 health or some other factors, but we remember him, he
3 was involved with us. So we thank you for mentioning
4 that.

5 One question I have, do you have data
6 comparable to what you laid out here for other states?
7 You mentioned New Hampshire and your involvement there.
8 Do you have other states in New England like Vermont and
9 Massachusetts and so on that could give us some
10 comparison with data to where Maine stands in relation
11 to some of these things?

12 MR. CLOUGH: Nothing of the sort that
13 compares 2005 to 2013 because Maine is unique. There
14 are very few states that have economic forecasting
15 commissions where it's public. Now, I think a number of
16 states subscribe to Economy.com and that's a proprietary
17 organization in Pennsylvania, and it does give state
18 economic forecasts for those that subscribe. I don't
19 know if the State Planning Office -- the State of Maine
20 does subscribe. I don't know if they would be able to
21 pull that up. It might only be the State of Maine that
22 they're -- that they pay for. USA Today does have
23 something that using Economy.com where for different
24 industry sectors and all of the states it compares the
25 third quarter of 2009 to the third quarter of 2010 or

1 something like that but it doesn't go out beyond a
2 couple of years. So unfortunately I don't think I would
3 be able to come up with exactly what you're looking for.

4 CHAIRMAN STANLEY: Okay.

5 Linda Snyder.

6 MS. SNYDER: Thank you very much for
7 presenting to us.

8 Probably one of the most famous -- if you
9 want to use that term -- people to come out of the State
10 Planning Office is Charlie Colgan. And about 20 years
11 ago, I was working on my second master's degree, I took
12 his class, government business relations. And Charlie
13 said something then that really struck home to me which
14 is government should not be in the business of doing
15 what private industry can do and make a profit at it.
16 So when you started out by saying that, I was like oh,
17 wow. Actually, by the way, I have a group on Facebook
18 called government business relations where we talk about
19 those kinds of thing. Because you led off with that,
20 though, aside from the fact that I wanted to tell my own
21 little story, do you see that that's an issue?

22 MR. CLOUGH: It is an issue, but I cannot
23 describe it very well. I can definitely not quantify
24 it. I did have a hand several years ago writing the
25 private enterprise competition committee, review

1 committee. It's advisory is not -- it doesn't have
2 statutory power. And there are laws in Maine that we
3 have had a hand in writing several years ago that try to
4 put a damper on that but it still exists to a degree.
5 One of the biggest -- two big areas are prison
6 industries but also university system is another. And
7 it may -- I don't know if it's accelerated because this
8 whole approach among the public sector could become more
9 entrepreneurial. And more entrepreneurial can mean to
10 think up new ways to sort of collect fees or sell a
11 product or service to the public. So it's possible that
12 there has been a growth. I haven't seen anything real
13 recent on the issue but it's out there. It doesn't have
14 to be widespread to have a big effect. If it puts
15 companies out of business, it is having an effect. If
16 it puts people out of work, it's having an effect.

17 MS. SNYDER: I do have some experience with
18 that topic, in that in the social services field, state
19 employees doing comparable work to private agencies.
20 And they have a much richer benefits package plus they
21 are paid more which makes it very difficult for the
22 private provider agencies to attract maybe good
23 employees to do the work on a more cost-effective basis
24 when they're competing against government employees who
25 make a lot more.

1 Thank you.

2 MR. CLOUGH: Thank you.

3 CHAIRMAN STANLEY: Ed Phillips.

4 MR. PHILLIPS: Only 60 inches of snow?

5 MR. CLOUGH: I think that year, they ended
6 up with 141.

7 MR. PHILLIPS: I was brought up that 60
8 inches was summer.

9 We did have a complaint in the previous
10 board with government agencies competing against private
11 business. In this case -- and we didn't follow through
12 and it was too bad because things kind of went to heck
13 when Marge left. In this case, it was university
14 printing against private printers. University budding
15 to publish books and drastically underbidding the
16 private printers because frankly they don't have to
17 expense capital equipment. When he asked one of them
18 that there doesn't seem to be you have enough people
19 here, they said, oh, we take all of the secretaries long
20 enough to get the project done. So it is a real issue.
21 This guy was put out of business. He was a good
22 printer. He used to be a customer of mine. It is a
23 problem in these areas.

24 The other thing is, it is interesting, I
25 think it was the mayor of Indianapolis who wrote an

1 article a few years ago said that -- this idea, again,
2 of government in business. He would take the yellow
3 pages and any time he found three businesses doing
4 whatever somebody in government shouldn't be doing. So
5 one of my thoughts has always been we have too much
6 government. One way of solving all of these complaints
7 is don't have government bothering them. These are
8 things sometimes maybe we can look at. Stimulus money
9 is maintaining government. It's not dividing private
10 sector jobs and such. I think there just is too much
11 government and I think NFIB would agree with that.
12 We're not going to create jobs with what's going on in
13 D.C. right now. If I were going to hire 20 people, I
14 wouldn't hire anybody right now until I knew, cap and
15 trade, what is it going to do to me; healthcare, what is
16 it is going do to me all of which drastically increases
17 the costs of employing people. And we go through the
18 same thing here in the state. Every little agency comes
19 in with a fee. Workmans' Comp keeps sneaking on us,
20 unemployment is going to take a 55 percent jump. Maybe
21 we ought to take a look at that. I forgot about that
22 this morning. Maybe we ought to address that. Why in
23 heaven's name is unemployment taking a 55 percent jump
24 at a time when people can't afford to hire anybody?

25 I think your group does a great job and

1 hopefully you stay involved with us because you do have
2 an outreach to a lot of different business people.

3 With that, I don't have much to say.

4 Sixty inches isn't much.

5 MR. CLOUGH: Thank you.

6 CHAIRMAN STANLEY: Marie Emerson.

7 MS. EMERSON: Thank you, David, for coming
8 today.

9 MR. CLOUGH: Thank you.

10 MS. EMERSON: We have heard a lot today
11 about government's effect in business and it hasn't been
12 real positive. I did hear you mention something about
13 the department of economic development, and it didn't
14 seem that they were too helpful. You also mentioned
15 confidence versus uncertainty. I'm hoping that this
16 board can build confidence, and I would like to hear
17 some good stories about the Department of Economic
18 Development. Do you hear that from your small
19 businesses?

20 MR. CLOUGH: I do not hear good stories.
21 Part of that is -- a very small part is that people are
22 more willing to speak out about what they're upset about
23 rather than what they're happy about. Maybe in a rotary
24 meeting they would put a happy dollar in and say
25 something nice. Otherwise in addition, the Department

1 of Economic Development has very little direct
2 involvement with the constituents. I represent small
3 businesses. They have some involvement with specific
4 industry sectors. I think the state has identified six
5 or seven sectors. There are the sectors the state cares
6 about and there is some involvement with those sectors.
7 But with the general business population, small business
8 population, they don't have any direct involvement in --
9 you asked during the break about how many small
10 businesses there are in Maine. And there are, depending
11 on how you do it, there are roughly 35 to 40,000
12 businesses in Maine that employ one or more people and
13 are under -- I think it's under 50 employees, the vast
14 majority of business. I'm not including self-employed.
15 Maine has about 75,000 self-employed people. A lot of
16 those are Schedule C, but a lot of them it's not a day
17 job, it's a weekend or night business that they're
18 running. I don't recall what the percentage of
19 self-employed are that it is their day job. But the
20 DECD has a lot of involvement with the communities.
21 They have involvement with the tourism industry, there
22 is the film office, international trade. But for the
23 35,000 or so businesses, there is not much involvement.
24 When you hear success stories, you might hear a story
25 about an individual business, a very small niche

1 industry sector. But if you add all of that up, I would
2 be willing to bet you couldn't even get to two percent
3 of Maine's businesses or economy because it is a big
4 economy but that's not where the focus is for a variety
5 of reasons. It's a pet peeve of mine, to a degree,
6 which is why I mentioned it. The business that are
7 creating the jobs, the business that will create the
8 jobs, the people who don't yet know that they will be
9 creating the jobs, they don't receive much of any
10 attention unless they are in a sexy business or a
11 predetermined area of targeted for success. And it's
12 been mentioned recently as part of the federal job
13 summit that government doesn't create jobs, business
14 owner people do. People who have money and are deciding
15 what should I do with that money? Do I investment in my
16 idea or not? Do I do it in Maine or do I do it
17 somewhere else? Most of the job development, according
18 to researchers, comes from within your own borders.
19 Recruitment accounts for very little job growth. Most
20 of it comes from within your own borders. Well, for a
21 number of years, the Fortune 1,000, 500, 100, they were
22 shrinking their employment. But the sector that does
23 the job growth, small business, is the sector that
24 receives the most attention in the elections and the
25 least attention after the elections.

1 MS. EMERSON: Thank you.

2 CHAIRMAN STANLEY: Van Perry.

3 MR. PERRY: I would like to just follow up
4 on what Marie was talking about when she was talking
5 about the DECD, and we were kind of talking about this
6 this morning in our meeting.

7 Do you see a lot of redundancies in the
8 whole economic development arena that your small
9 business might be working with as far as different
10 government agencies and different places where they can
11 go? Is there overlap? What are you seeing with that?

12 MR. CLOUGH: It has been a little while
13 since I took a look at that. I don't hear that much
14 about it, but, again, the membership that I represent
15 doesn't have much involvement with DECD or vice versa.
16 But I do recall there is definitely some redundancy,
17 there is some overlap, there is some gaps. I'm trying
18 to -- there was a -- I think an off-session study done a
19 couple of years ago about economic assistance, delivery
20 programs. It has been a while since I looked at them.
21 I am handicapped by not having a lot of anecdotal
22 information from people who have had actual experience.
23 Most of those who have, it's been isolated. Generally
24 you say, well -- I can give you two recent anecdotes,
25 somewhat dissimilar. A friend of mine is involved in a

1 business in southern Maine, York County. Had a part of
2 the state in York County that has high unemployment,
3 there is a building they were looking to lease out to a
4 business. They made arrangements for a tour of the
5 business. People from DECD came down and things looked
6 kind of hot. Then they left and never heard from them
7 since and that was a couple of weeks ago, and that was a
8 business interested in moving in.

9 Another friend of mine has a manufacturing
10 company and a couple years ago, the Economic Development
11 Department of the Province of New Brunswick came and
12 asked them if he would be willing to move his business
13 to New Brunswick and they would give him all kinds of
14 assistance if he did that. He wasn't going to do that.
15 His business was over 100 years old and he was going to
16 stay right here in the State of Maine. But when it came
17 to getting help in the State of Maine, there was no help
18 to be had. In fact, the state buys -- in fact, on
19 public procurement projects, they were using his
20 competitors in New Brunswick, Quebec to provide what he
21 was paying for as the taxpayer in Maine and using the
22 exchange rate and so on and so forth to create a very
23 un-level playing field. He would have been better off
24 financially if he would have gone to New Brunswick.
25 Fifty people would have lost a job in Maine. He still

1 has his business, but it's struggling. But he would
2 have been much better off by leaving and going to New
3 Brunswick. Some of that is in our control and some of
4 it is not. The exchange rate certainly is not but he
5 couldn't get anybody in Maine to take an interest in
6 helping him keep his 100-year-old manufacturing business
7 in operation. So I suppose it's listen but then again
8 if you just listen and do nothing, that's dissatisfying
9 to small business owners. Small business owners don't
10 have a feeling, from what they tell me, that people in
11 positions of leadership and political power in the
12 state, they don't have the feeling that they really care
13 or are empathetic. You get things like paid sick leave.
14 We have legislation to make Maine the first state in the
15 nation to have a paid sick leave law. It's hugely
16 expensive. It's going to be fought out next year. That
17 creates uncertainty for the people. But it also breeds
18 an attitude that we're more interested in the benefits
19 of jobs than we are in having the jobs to begin with.
20 That's not the most apt way to put it, but there is a
21 huge emotional problem out there but it's not incurable.
22 By the way, I don't want to forget to say this. I don't
23 want to seem like a pessimist because I do believe we
24 can solve our problems if we're willing to identify our
25 problems, talk about it and come to an agreement. But

1 somebody said, well, in Maine, it will never happen.
2 And I said no, no, no. I said, do you remember the Red
3 Sox? It said it was years and years and years when I
4 was a kid, the Red Sox are going to win the World
5 Series. They came so close a couple of times and people
6 would sort of start to lose hope. No, you just have to
7 be faithful about it and by God, they did win the World
8 Series. If everybody had given up on them, maybe they
9 wouldn't have, maybe they wouldn't have had the
10 emotional support by the fans to get over the top. So I
11 believe in that. As long as you have a future, you have
12 a chance. Now, I can't speak for the Chicago Cubs fans,
13 they have their own challenge, but at least we have
14 shown that the Red Sox can win a World Series, the
15 Patriots can win a Superbowl, the Bruins can win a
16 Stanley Cup and the Celtics can win whatever they call
17 that. And we can do it. As long as we're willing to do
18 it, we can do it as long as we have a chance.

19 CHAIRMAN STANLEY: Beth Shissler, do you
20 have any questions?

21 MS. SHISSLER: I don't have any questions.
22 You have given me a lot to think about so thank you for
23 your insight. It's clear that your passion for Maine
24 comes through. In fact, all of us that have businesses
25 here do so because we choose to, not because it's

1 easiest or not because it wouldn't be cheaper to produce
2 or have companies elsewhere. So thank you for your work
3 and thanks for your insight. We can use your help along
4 the way.

5 MR. CLOUGH: Thank you.

6 CHAIRMAN STANLEY: Mr. Merrill, any
7 questions?

8 MR. MERRILL: No, thank you for coming.

9 CHAIRMAN STANLEY: Any members of the
10 public, the dwindling people that are hanging in there
11 with us?

12 MS. EMERSON: Excuse me, I would like to ask
13 one more question. To build on the confidence piece
14 again, the positive piece, the pine tree zones have been
15 expanded throughout the State and I'm wondering what
16 small businesses are saying about it, has it been a help
17 to them?

18 MR. CLOUGH: Most small businesses would say
19 no and the reason why is because it is not designed to
20 be a help to them. When you look at the requirements
21 that you have to offer, the wages you have to offer, the
22 benefits including retirement benefits, et cetera, it's
23 going after, quote, unquote, good jobs; pay well and
24 have good benefits and that is -- that's a good desire
25 to have. But in saying we're only going to be

1 interested in those jobs, you're saying to everybody
2 else, we don't really care about you. Unless you can
3 get over to this side, then we will do all kinds of
4 things for you, but we don't care about you.

5 Another thing -- I don't want to get into
6 pine tree zones too deeply, there is a lot of interest
7 in it, it's helped businesses move from one community to
8 another. It has helped businesses maybe modernize. But
9 things like pine tree zones, tax increment financing,
10 all of that stuff, it's not really designed for small
11 businesses. There are some that take advantage of it
12 but that's not the focus, that's not the orientation.
13 There is not a lot of sex appeal in helping a business
14 grow from three to five or five to eight, from ten to 15
15 but that's where -- that's where it comes from. Imagine
16 in gardening, if you were planting your garden and just
17 trying to plant a couple of big seeds and hope you get a
18 whole bunch of bountiful vegetables and fruits from a
19 couple of big seeds. Good luck on that. What you do is
20 you take all of these little seeds, throw them down the
21 row and tend to them and hope that the slugs won't get
22 them all and that you'll have a chance to have some
23 crops. And not all of the seeds will produce crops but
24 enough will. But you're using small seeds and that's
25 where it starts.

1 CHAIRMAN STANLEY: Very well put.

2 MS. SHISSLER: I do have one more question.
3 You indicated that beyond the seven clusters of the
4 state and you didn't use the word cluster, my choice for
5 the state. Unless the business was called sexy, they
6 didn't get a lot of attention from DECD? What's a sexy
7 business that gets a lot of attention from DECD.

8 MR. CLOUGH: I was talking about politically
9 sexy, and those are the ones that are listed in those
10 seven industry sections: Information, technology -- I
11 don't recall what the seven sectors are. They have
12 morphed them into clusters. And, by the way, I heard
13 Michael Porter speak to people over at the state house
14 back in December of 2007. And the one thing he told
15 them is you can't make clusters work by going out and
16 trying to identify the clusters yourselves. They're
17 going to become self-identified. Can you help them, but
18 you can't create them. In a sense, you can't create
19 them from the top down, it has to be a bubble-up
20 process. He also said that you can't develop the
21 economy by trying to hand out tax breaks and so forth to
22 lure businesses. Whenever you offer, there are five
23 other states that can match that or do better and
24 they're not isolated in Northern New England.

25 MS. SHISSLER: Just so I'm clear, the

1 businesses getting the attention for the most part from
2 DECD are the ones in those clusters or sectors?

3 MR. CLOUGH: The clusters or sectors. That
4 is, if you will, mandated on DECD, it's kind of in their
5 statute. What they do, their name is broader than their
6 actual functions, I guess.

7 MS. SHISSLER: Thank you.

8 CHAIRMAN STANLEY: Thank you very much, Mr.
9 Clough, for coming and your interesting comments.

10 We will go now to Linda Snyder to introduce
11 our next witness.

12 MS. SNYDER: Chairman Stanley, fellow board
13 members and staff, members of the audience, I want to
14 introduce to you Marianne Sensale-Guerin, a former
15 business owner who is going to talk about some DEP -- a
16 concern she had with the DEP.

17 Marianne Sensale-Guerin is a resident of
18 Windham, has owned a number of small businesses in
19 Maine. Beginning in 1991, Marianne opened and operated
20 Pollution Control Services, PCS, until it was sold to
21 North American Environmental Services in April of 1999.
22 Marianne worked with the company that purchased PCS
23 until 2001. In 2001, Marianne opened and operated
24 Guerin Associates, LLC, an environmental services
25 company based out of Gorham. She expanded the business

1 in 2002 to include a home heating oil delivery service
2 and property management company. In April of 2005,
3 Marianne received a Small Business Administrations
4 National Small Business Person of the Year Award; quite
5 a feat, I think, for somebody from Maine.

6 During my ownership of the -- this goes into
7 her own words.

8 During my ownership of the Guerin companies,
9 I was a non-native of problem after problem from the
10 Maine Department of Environmental Protection. My once
11 thriving and profitable business suffered to the point
12 of closure and bankruptcy in 2007. Maine DEP retaliated
13 against me and my company because I challenged their
14 contractor hiring practices and regulatory
15 interpretation. In my naivety, I believed that I would
16 be able to address these issues without repercussion; I
17 was wrong. And even though I got my legislator
18 involved, there was no way to make staff accountable for
19 their actions. I don't want this to continue to happen
20 to other small businesses. I am hoping that the
21 Regulatory Fairness Board will begin to hold the
22 regulators accountable for their actions.

23 Thank you for attending today.

24 MS. SENSALE-GUERIN: Thank you very much for
25 having me.

1 First I would like to start by commending
2 the administration for establishing the Regulatory
3 Fairness Board. I feel it is a very positive step in
4 holding, aiding businesses and holding the regulators
5 accountable for their actions.

6 What I am going to talk about today is a lot
7 different than what you've been hearing. I'm basically
8 going to give you a story, a chronology of events that
9 happened to my business back in -- well, it started in
10 2005, right after I had received the award. So just
11 kind of bear with me. Some of the information is just
12 lots of dates but I'm just trying to show you how
13 everything progressed to the point where it progressed.

14 In late 2004, the Maine Department of
15 Environmental Protection sent out a request for proposal
16 for contractors to demonstrate that they meet the
17 qualifications to be on a pre-qualified removal of
18 hazardous substance contractor's list. My company,
19 Guerin Associates, submitted its qualifications package
20 including the resume of a lab pack chemist who the
21 company had on retainer.

22 In January of 2005, Guerin was notified that
23 none of whom responded to the RFP were approved and each
24 had their own specific deficiencies. The
25 Guerin-specific deficiencies was that they wanted

1 clarification of the lab pack chemist and they wanted us
2 to included a resume which we had already included and
3 then to elaborate on our erosion control practices.

4 In order to correct the deficiencies cited,
5 Guerin sent a statement clarifying the lab pack
6 chemist's availability, qualifications and resubmitted
7 the same chemist's resume by the February deadline.
8 Guerin also sent copies of the certification for erosion
9 control practices.

10 Shortly thereafter, I was contacted by DEP
11 staff to clarify whether the lab pack chemist was on my
12 payroll. I explained he was not but he was under
13 retainer. In March of 2005, I called staff at the DEP
14 to determine the status of the pre-qualification package
15 review. I was informed that the company did not qualify
16 because they had no lab pack chemist on the payroll. I
17 was, however, assured that my company would be sent a
18 retainer contract which I had possessed three years
19 previously that was to be the same contract that the
20 pre-qualified contractors received. I was confused by
21 the statement and requested clarification between
22 holding a retainer contract and placement on the
23 pre-qualified contractor list. I did not receive a
24 response.

25 In late March of 2005, I received five

1 original retainer contracts to sign and return for final
2 signature and distribution. I signed and returned the
3 retainer contract the same day. DEP notified me in a
4 letter dated March 30, 2005 that Guerin did not meet the
5 minimum qualifications outlined in the RFP for the
6 pre-qualified contractors list, but it did not give me
7 specific reasons why we did not qualify. Because I did
8 not receive a reason for the denial of the pre-qual RFP
9 or an explanation between the difference of the pre-qual
10 and the retainer contract, I submitted a letter dated
11 April 7, 2005 to the Bureau of General Services to begin
12 the appeal process.

13 In early April 2005, I was contacted by the
14 DEP to submit on letterhead that I had authority to sign
15 contracts for Guerin. This was only in regards to the
16 retainer contract. I authored, signed and faxed the
17 authorization the same day.

18 In mid-April of 2005, I contacted Maine DEP
19 and asked for the status of the retainer contract. At
20 that time, I was informed that the retainer contract
21 would not be forthcoming until the appeal of the
22 hazardous waste pre-qualification contractor contract
23 was resolved.

24 I just want to clarify this a little bit
25 here is that I was under the understanding that the

1 retainer contract was the same as the pre-qualified
2 contractors contract and it would give me the ability to
3 bid on larger remediation sites like the Wolman site in
4 Waterville.

5 Then after being honored by the SBA in
6 April 2005, I took full advantage of the benefit and a
7 request was made by the SBA on my behalf for a meeting
8 with the then commissioner of the Maine Department of
9 Environmental Protection, Dawn Gallagher, to discuss my
10 concerns with the DEP RFP bidding practices. The
11 meeting was scheduled for June 30, 2005. One week
12 before the meeting with the commissioner, I received the
13 retainer contract which had been held by the DEP for
14 three months. On June 16, 2005, I was contacted by the
15 DEP to provide some services for a small clear-cutting
16 job at the Wolman site in Waterville. At that time, I
17 had many conversations with the project manager on my
18 desire to bid on the upcoming larger remediation
19 project. Never was I told that my company would not
20 have the opportunity to bid the project.

21 On June 30, 2005, I met with Commissioner
22 Gallagher, then Bureau Director Steve Davis, David
23 Maxwell who represented the hazardous waste area of the
24 DEP and the commissioner's assistant. I informed the
25 group of the reason that I was given for the denial on

1 my pre-qualification contractor listing and my position
2 that it was unfair to require a chemist on the payroll
3 of a small business. The expense of having a chemist
4 full-time on my payroll would have been astronomical and
5 it was not necessary because having him under retainer
6 served the purpose and the requirements under the
7 pre-qualification.

8 I was informed by Steven Davis, the director
9 at the time, that he had consulted with his staff, head
10 of his staff, Mark Highland, and was told that the
11 chemist need not be on the staff as long as there was an
12 established partnership with the contractor. I had a
13 signed contract with the contractor stating that they
14 would respond according to the contract so I felt I was
15 covered, I felt everything was fine. I had assumed,
16 given the authority of those present at the meeting,
17 that Guerin would be added to the pre-qualified
18 contractor list.

19 By mid-August of 2005, I checked with the
20 DEP on the timetable of the Wolman remediation bid
21 package. The response that I received was that, "due to
22 the emergency nature of this site" -- and I'm quoting
23 this -- "and because legislature allocated special funds
24 to clean up the property, DEP utilized the pre-qualified
25 contractor list to select a contractor for this

1 project." You could imagine my surprise when my company
2 was not included. Only after legislative intervention,
3 Maine DEP conceded, added Guerin Associates to the
4 qualified contractor list. However, Guerin had lost the
5 opportunity to bid on the largest hazardous waste site
6 cleanup in 2005. At that point, a significant downward
7 spiral for my company began with the Maine DEP.

8 In October of 2005, Maine DEP staff from the
9 Bureau of Remediation and Waste Management Tank
10 Enforcement Division inspected a Guerin job site. It
11 was a retail gasoline station located in South Portland.
12 Even though the remediation project was already approved
13 and being overseen by Maine DEP's Voluntary Response
14 Action Program, the tank enforcement staff had
15 absolutely no authority over the site that we were
16 working on. They only had authority over underground
17 storage tanks.

18 Notably, the timing of the inspection
19 directly followed Maine DEP's failed negotiation with
20 Guerin in the pre-qualified contractor matter.

21 On October 20, 2005, in the presence of
22 Guerin's customer and an engineering consultant on the
23 site in South Portland, Maine DEP staff proceeded to
24 loudly berate the Guerin crew about its alleged failure
25 to follow the rules regarding the integrity of

1 underground piping and whether a certified tank
2 installer was needed on the job site.

3 At Guerin's request, the manufacturer of the
4 underground fuel piping provided a letter to the Maine
5 DEP confirming that DEP staff was incorrect in their
6 assessment of the integrity of the pipe.

7 Regarding the certified tank installer
8 issues, Guerin maintained that one was not needed and
9 staff was not able to cite specific legal authority to
10 require the oversight of a certified tank installer.

11 Thereafter, during the course of the job,
12 there was no follow-up discussion about the necessity of
13 a certified tank installer and Guerin believed that both
14 matters had been resolved.

15 On October 21, 2005, the day after the job
16 site incident, Maine DEP staff of the Division of Oil
17 and Hazardous Waste Management performed a hazardous
18 waste audit of the Guerin shop in Gorham. Complete
19 surprise, didn't know anything about it.

20 The facility contained a garage used only to
21 store its company vehicles. Not even oil changes took
22 place there. The company was not a hazardous waste
23 generator, we were not a treatment facility or a storage
24 facility. Maine DEP inspectors in violation of state
25 statute did not announce themselves prior to the

1 inspection. They finally introduced themselves when a
2 Guerin employee caught them looking in the dumpster.
3 The inspection continued for eight hours. By all
4 accounts, a hazardous waste audit is unprecedented for a
5 facility of this size and capacity. Again, after
6 tremendous financial costs to Guerin, the Maine DEP
7 cited Guerin for having a five-gallon unopened pail of
8 wood stain at its location.

9 MR. PHILLIPS: That's it?

10 MS. SENSALÉ-GUERIN: That's it, that's what
11 we got cited for. It was a five gallon unopened pail of
12 wood stain.

13 MR. PHILLIPS: Wood stain?

14 MS. SENSALÉ-GUERIN: Wood stain.

15 Then in January of 2006, the October 20,
16 2005 certified tank installer issue from the job site
17 that was inspected resurfaced before the Board of
18 Underground Storage Tank Installers. Proper procedure
19 was thrown out the door and all employees of Guerin that
20 were being brought up to the board were named to the
21 board which is totally unprecedented. They usually do
22 everything anonymously but every name was in that file
23 from staff. Ultimately, after months of legal battle,
24 cost and lost time for myself and three of my staff,
25 Guerin prevailed and no fault was found.

1 Maine DEP continued their retaliation of
2 Guerin by doing surprise inspections on sites that
3 Guerin had worked on and did everything they could to
4 find fault with the projects. One staff member went so
5 far as to tell a potential client that Guerin did not
6 have the required licenses to perform underground
7 storage tank work.

8 I can go on and on. This is just the tip of
9 the iceberg, it really is. I had so many problems with
10 the DEP.

11 Simply put, my company won battle after
12 battle but ultimately lost the war. The company is no
13 longer in existence -- I'm sorry. I have to compose
14 myself. It is very emotional for me. Twenty-five
15 full-time good paying jobs are gone. I am keenly aware
16 from discussions with other small business owners that
17 Maine DEP is not the only regulatory agency that makes
18 it difficult for businesses to thrive in Maine.
19 However, I can only speak for myself. Regulators and
20 regulations are there to protect the people of the
21 state. When regulators become dictators, democracy is
22 threatened as is our freedom. Small business represents
23 approximately 95 percent of the businesses in the State
24 of Maine. Regulators should be working with businesses
25 to help them grow and prosper, not strong arm them into

1 submission, or even sadder, extinction.

2 I'm very appreciative of your time, and I
3 hope that my words will give you pause to think about
4 the intimidation practices of some regulators and how
5 they affect business and the economic effects of the
6 State of Maine.

7 Thank you very much.

8 CHAIRMAN STANLEY: Thank you very much.
9 That's quite a story.

10 At one point, you said that you had quite an
11 extended legal fight and that you won the legal rounds
12 that occurred.

13 MS. SENSALÉ-GUÉRIN: Correct.

14 CHAIRMAN STANLEY: That means you had an
15 attorney or attorneys.

16 MS. SENSALÉ-GUÉRIN: Correct.

17 CHAIRMAN STANLEY: Did these attorneys,
18 after you had hired them to do certain specific issues
19 and appeals, did they stay with you? Have they
20 continued, in any way, to represent you or to bring any
21 of these kinds of questions before state courts or other
22 possible bodies?

23 MS. SENSALÉ-GUÉRIN: Well, yes. Actually,
24 what I did do after the business was basically gone, to
25 be quite honest with you, I filed a complaint with the

1 Maine Human Rights Commission which my attorney stayed
2 with me also. The problem was that there was nothing
3 really that the Maine Human Rights Commission could do.
4 We went through a whole process that we didn't get due
5 process, we had retaliation issues but there was really
6 nothing that they could do but they did give us a
7 right-to-sue letter. I then took it to, with the
8 attorney that I had, to another very prominent attorney
9 here in Augusta and had him review the whole file. His
10 words to me were you were definitely done wrong.
11 However, there is really not much you can do because of
12 the indemnity that state workers have. It's your loss
13 kind of basically. We would love to be able to help
14 you, but there is really nothing else we can do.

15 CHAIRMAN STANLEY: Well, that's curious in a
16 way because there are ways to go in this kind of a
17 situation into a court and get what they call a writ of
18 mandamus ordering a bureaucratic agency to do this or to
19 do that. Those are certainly available in federal
20 courts. I don't know if the State of Maine has but I
21 assume there are state judicial remedies to some extent.
22 But you obviously had some legal representation and you
23 say you took this to an attorney well recommended and so
24 on and that that attorney did not think you could really
25 take it any further.

1 MS. SENSALÉ-GUÉRIN: He didn't think I could
2 win, that was the crux of the problem. He really did
3 not think I could win. I could take it and I could
4 spend more money and more money and more money which I
5 didn't have at this point because the reputation of the
6 company had been ruined, I lost everything. So then you
7 have to say, you know, it's time, I have to cut my
8 losses.

9 CHAIRMAN STANLEY: Certainly. And I think
10 most of us who have operated businesses have had, at one
11 time or another, an attorney say this will cost you a
12 whole bunch for you to get ultimate satisfaction and you
13 might not get satisfaction anyway so we know that
14 experience.

15 MS. SENSALÉ-GUÉRIN: Exactly.

16 CHAIRMAN STANLEY: I will go down the line
17 here. We don't have all of our people still but I will
18 start with Linda if you want to ask a question.

19 MS. SNYDER: It's kind of like being a
20 victim of a drive-by shooting, isn't it?

21 MS. SENSALÉ-GUÉRIN: Absolutely.

22 MS. SNYDER: The hypervigilance, the
23 anxiety, the depression and it takes a very, very long
24 time to go away. I'm sorry you went through it, I
25 understand it.

1 MS. SENSALE-GUERIN: Thank you.

2 CHAIRMAN STANLEY: Ed Phillips.

3 MR. PHILLIPS: I'm sorry about what
4 happened.

5 MS. SENSALE-GUERIN: Thank you.

6 MR. PHILLIPS: Just being a citizen of the
7 State of Maine, it doesn't make me proud. It's the
8 reason that I fought so hard -- and such a story as we
9 heard in the first two years from different groups about
10 regulatory boards and agencies. I sincerely hope that
11 we can get the administrative law judge bill through and
12 see if this will help any.

13 MS. SENSALE-GUERIN: I certainly hope so.
14 It certainly sounds promising.

15 MR. PHILLIPS: I have talked to people in
16 these agencies and they will say to me, I have survived
17 three commissioners, they can't fire me type of thing
18 and that builds an I-am-God complex in these people.

19 MS. SENSALE-GUERIN: Absolutely, absolutely.

20 MR. PHILLIPS: So I am really sorry. I hope
21 you will appear and testify when the bill comes up for
22 consideration because we need real issues, real
23 stories --

24 MS. SENSALE-GUERIN: Hopefully I won't get
25 as emotional.

1 MR. PHILLIPS: -- in order to try and get
2 this thing through and see if it will work. I have high
3 hopes it will work, but by the time the politicians get
4 through, who knows. I am, again, really sorry. I have
5 gone through some of this stuff too as a business owner
6 and I know how they put it to you and they do retaliate,
7 absolutely retaliate.

8 MS. SENSALÉ-GUÉRIN: They do.

9 You know, the sequence of events in my
10 situation it was so obvious. Yet I couldn't do
11 anything, my hands were tied. I had to go through the
12 process, I had to spend the money. I had to defend
13 myself, I had to defend my employees. I had to go on
14 and on and on. It was an unbelievable process, it
15 really was.

16 CHAIRMAN STANLEY: Marie Emerson.

17 MS. EMERSON: I'm sorry, Marianne, too, I
18 am. And I am especially sorry for the people who lost
19 their jobs, the 25 people who lost their jobs. It's
20 like anything, whether it's a bad cop or a bad
21 regulator, it is a terrible thing.

22 But I am curious, in the beginning when it
23 all started, do you think in the beginning with the
24 application process, do you think it was just an office
25 mess up? I guess I don't understand how -- why they had

1 it out for you I guess is what I'm trying to understand.

2 MS. SENSALÉ-GUERIN: I don't think that they
3 initially specifically had it out for me. I think they
4 had in their mind the contractors that they wanted to
5 bid that Wolman site, and my business was not one of
6 them. So when they were going through the process, they
7 said, okay, how are we going to write this RFP to make
8 it fit who we want to be on this pre-qualified list.
9 There were three people on that pre-qualified list.
10 Three companies in the whole State of Maine made that
11 pre-qualified list. And out of those three companies,
12 the DEP -- I don't know for sure but this is my
13 feeling -- wanted one contractor to do that job from the
14 very, very beginning and that's the contractor that got
15 the job.

16 MS. EMERSON: But what went on with the
17 constant inspections and things like that, where do you
18 think that came from?

19 MS. SENSALÉ-GUERIN: I really believe that
20 that came from when I got the audience with the
21 commissioner. I think that staff took that as me trying
22 to paddle on them which was not my intention. My
23 intention was to let's see if we can't make the hiring
24 practices in the State of Maine more streamlined, more
25 fair, make sure that everybody's included, save the

1 state money and let's talk about it, let's see what it
2 is that we can do. But I think that staff took it as me
3 going behind their back. I was naive to be quite honest
4 with you, I was naive.

5 I worked with the DEP for many, many years
6 in other businesses and I knew from years before with
7 working with the DEP is you don't say something against
8 the DEP. I know another business that had been in
9 business for 50 years, 50, 60 years, and the owner of
10 the business -- it was another environmental business --
11 had an issue with the DEP doing private sector work
12 which has been discussed here. And when he brought its
13 light to them, they buried him. The company is gone
14 after 60 years. So there is a lot of retaliatory
15 actions that do come from the regulators. They do.
16 They think they have the God syndrome, they think
17 they're God.

18 MS. EMERSON: Were you able to get it to the
19 newspapers?

20 MS. SENSALÉ-GUERIN: Well, at the time my
21 attorney suggested that I didn't do that. They didn't
22 want to make it any more difficult for me. If word had
23 gotten out, then it could have been tainted or whatever
24 so they said don't go to the newspapers. Though I could
25 have because when I received my award with my notoriety,

1 they liked to talk to me but I didn't because I thought
2 it was in the best interest of my company and the best
3 interest of my employees and the best interest of myself
4 so I didn't but it didn't matter. In the end, it didn't
5 matter.

6 MS. EMERSON: Thank you for sharing.

7 CHAIRMAN STANLEY: Okay.

8 Van Perry.

9 MR. PERRY: Yes.

10 As we have heard or as I have mentioned to
11 other people here today that we have heard from, what we
12 would like is some recommendations. Is I'm just
13 wondering if there are -- not that you have to tell us
14 today, but if you could come up with some
15 recommendations for us as a board for changes that we
16 could suggest. Not that we have the power to make
17 change but we definitely have the power to influence
18 change. So if we could get, at some point, some
19 recommendations from you as to some things that could be
20 done --

21 MS. SENSALÉ-GUERIN: Well, the main thing
22 that -- I don't know how to accomplish it, but I really
23 think the main thing is to be able to let staff know
24 that there are ramifications for their actions. I don't
25 know how we get that through the legislature. I'm not a

1 lawyer, I'm not a lobbyist, I'm an entrepreneur, I'm a
2 businessperson. But there has to be a way that we can
3 bring some type of legislature that will bring
4 regulators to task, it will call them to task that they
5 can't do this to businesses. It ruins our economy also.
6 It's not just putting one small business out of
7 business; it snowballs. But I don't know how we
8 accomplish that.

9 MR. PERRY: If we could keep the dialogue
10 open about that, I would like that. Thank you.

11 MS. SENSALÉ-GUERIN: Okay, thank you.

12 CHAIRMAN STANLEY: Staff, Mr. Merrill, any
13 questions?

14 MR. MERRILL: No, thank you.

15 CHAIRMAN STANLEY: Well, that was certainly
16 an instructive and valuable account that you gave us.
17 We have another DEP case that we're going to be looking
18 into after the first of the year and we will see that
19 you're invited to that session of the board when we're
20 going to take that up. It's a different complaint, a
21 different set of circumstances but there are some
22 similarities in terms of the behavior of the regulators
23 toward people that were complaining and were upset about
24 how things were being done. So you might find that
25 interesting and maybe a pattern could emerge from that

1 and with some recommendations that we could do something
2 about. So we thank you very much for your contribution
3 here today.

4 MS. SENSALÉ-GUÉRIN: I thank you very much
5 and I will do anything that I can to aid the board in
6 any way possible.

7 CHAIRMAN STANLEY: Great.

8 MS. SENSALÉ-GUÉRIN: Thank you.

9 CHAIRMAN STANLEY: Any questions from the
10 public? All right.

11 Mr. Merrill.

12 MR. MERRILL: I would like to welcome Jamie
13 Py to the front, please.

14 Jamie Py is the president of the Maine
15 Energy Marketers Association, and I have a note that you
16 will be speaking about the rulemaking process for
17 propane companies and Public Utilities Commission
18 concerns.

19 MR. PY: Thank you very much for giving me
20 the opportunity. I appreciate it. I will try and be as
21 brief as I can. It has been a long day for you folks,
22 and I think you are doing a great job. I really wanted
23 to be here fundamentally to see what this is all about
24 and some issue came up for us that I thought I would
25 bring to your attention. As I was sitting through the

1 testimony of my esteemed colleagues who had spoken
2 before me who are much more knowledgeable about some of
3 this stuff than I am, I thought I would incorporate it
4 into what I am going to say about an upcoming
5 rulemaking.

6 If I can give you just a brief history of
7 myself, I am an attorney. I have been working for the
8 association for about 15 years. I was one of the one
9 more person that Governor King wanted to hire. My boss
10 at the time working for the association -- formerly we
11 were the Maine Oil Dealers Association, I needed a
12 regulatory and compliance person. So I was that one
13 more job. My job was to look at the regulatory and
14 compliance issues that were being brought upon the
15 industry.

16 I would be happy to talk with you about a
17 lot of different things, but I will try to narrow it
18 down quite a bit. I didn't know Marianne's version of
19 what happened to her. She was a member of ours for a
20 lot of years, great entrepreneur, and I didn't know
21 exactly what happened at the end of the day but
22 sometimes those situations are not -- I shouldn't say
23 uncommon but sometimes you hear about them more than you
24 want to.

25 Fundamentally when I heard Chris Hall talk

1 about what was problematic within our business
2 regulatory area was too much friction, I heard overlap
3 of jurisdiction, need a public/private collaborative,
4 hostile costs and a few other issues. But what's going
5 on, and it happened on Friday that I happened to see
6 your notice in the paper about this meeting and it
7 happened that I was having a propane committee meeting
8 -- we represent the propane folks too -- and we were
9 working on a rulemaking that was just issued before us
10 from the PUC. The Public Utilities Commission actually
11 has some jurisdiction over some certain propane
12 installations that they have been given the authority to
13 by the federal government. So we have been talking with
14 them for over a year now about certain rules and how
15 policies are going to be developed. And they came out
16 with the rule and I said, look, there is probably one
17 thing we don't want to do and that is issue a rule in
18 January or December when the small businesses of Maine
19 are at their highest in workloads. These are small
20 businesses who are out there trying to fix your boilers
21 and install propane systems in the middle of the winter.
22 That would not be the best time because these people
23 just can't get to a hearing. Unfortunately, they issued
24 this on December 4th with a public hearing January 7th
25 with comment by January 20th. We are not utilities, we

1 do not have staffs, we do not have legal representation.
2 We have hired an attorney to deal with the PUC for
3 another issue that we just sort of resolved. So that's
4 really -- there is a timing issue for some of these
5 rules that come out and there is some listening that
6 needs to be done, I think, and you have heard that over
7 and over again.

8 These rules themselves will expand Maine
9 jurisdiction from where it currently is to a larger
10 jurisdiction that what the federal government requires
11 already. It will incorporate more sites that you see
12 out there, tanks sitting behind small businesses.

13 When it becomes a regulated entity, a
14 propane insulation, when it becomes regulated by the
15 State of Maine, there are ramifications for that and the
16 costs are between \$2,000 and \$8,000 a year which, of
17 course, have to get transferred to the business owner.
18 There is a lot of regulatory back and forth.

19 The state would like to -- in these rules
20 that were just promulgated, wants to increase how many
21 there are going to be, how many different sites are
22 regulated. Definitions are changed from the federal
23 regulations. Of course we're going to be first in the
24 country with these sorts of regulations.

25 I'm just trying to bring to your attention

1 two major issues: One is the consideration of listening
2 for timing. We can't adequately -- well, we will, we
3 will do the best we can but there is a 20-page set of
4 new regulations that apply to propane that have not been
5 there before interpreting all sorts of different federal
6 laws and they have been promulgated in December to be
7 heard in January when these folks can't necessarily be
8 there.

9 Really that's all I wanted to bring to your
10 attention. I know that you don't have the authority to
11 say, hey, stop that, but I'm glad I was here for the
12 whole day because you had some very good speakers. Matt
13 Jacobson did a great job. Unfortunately there are 100
14 people trying to interpret tax code. Like I said, I was
15 one of those people that was hired to interpret
16 regulatory effects on people like Marianne Guerin. So
17 you're doing a great job. I would love to be part of
18 things that came on. Please put me on the list of
19 noticing and, again, I would be happy to take any
20 questions you want.

21 We are not a sexy business, by the way.

22 CHAIRMAN STANLEY: Well, thank you very much
23 for your statement. I don't have a particular question
24 so I will defer to our deputy if she has.

25 MS. SNYDER: I think my brain is fried. I'm

1 sorry.

2 MR. PY: I totally understand, I totally
3 understand.

4 MS. SNYDER: Thank you very much for being
5 here.

6 MR. PY: Sure.

7 CHAIRMAN STANLEY: We have Ed Phillips.

8 MR. PHILLIPS: Out of curiosity, what do
9 these regulations cover? I'm a propane user. I thought
10 most of that was already covered under the fuel code or
11 something, you had to be so far from windows and spark
12 sources and things like that. So beyond that, what the
13 heck does the PUC care? Are they going to regulate
14 rates that you can charge for the propane?

15 MR. PY: No. That's an interesting little
16 dilemma. If you're going to regulate a utility, the
17 utility says that's fine if you're going to regulate us,
18 but we're going to have to put that into our rates. And
19 if you're not a utility, we're going to regulate you and
20 make you charge more money but where are you going to
21 get it? You have to get it from your customers
22 individually.

23 No, there is a federal Office of Pipeline
24 Safety which regulates pipelines, big natural gas
25 pipelines. That was its purpose. In that law, the

1 federal law, there is a little piece in there that talks
2 about propane. And that was for maybe mostly in the
3 midwest and out west there are some big propane
4 situations where you run propane pipelines and that has
5 been -- it has -- nobody paid attention to it until
6 probably ten years ago, but the definition is if one
7 tank supplies ten customers or if it supplies two
8 customers and the pipes run under a public place, then
9 it becomes what they call jurisdictional in which case
10 the PUC can regulate that. And there are all sorts of
11 plans you have to file, you have to submit all kinds of
12 documentation --

13 MR. PHILLIPS: The details of what's a
14 public place, is it --

15 MR. PY: Exactly. The definition of who is
16 a customer, that's in these rules, and what's a public
17 place. Unfortunately, these rules are recommending that
18 any commercial building is a public place. So that's --
19 you can see the expansion of where this goes to.

20 MR. PHILLIPS: I think the fuel board does a
21 pretty good job safety-wise.

22 MR. PY: Sure. There is -- the fuel board
23 does the safety. There are four inspectors. The fire
24 marshal also does part of this, your local code
25 enforcement inspector does some of this. So it is a

1 redundancy, further redundancy.

2 MR. PHILLIPS: That's a conflict between the
3 fuel board and the PUC.

4 MR. PY: If you have an office in your
5 house, then you could possibly be a jurisdictional --

6 MR. PHILLIPS: Okay, I see. Thank you.

7 MR. PY: Thank you.

8 CHAIRMAN STANLEY: Marie Emerson.

9 MS. EMERSON: I always wonder what brings
10 this stuff on. Was there a major explosion somewhere
11 that we weren't aware of?

12 MR. PY: No.

13 MS. EMERSON: So there was no reason why we
14 should go further than the federal rules?

15 MR. PY: Right, that's true. There is
16 always that situation about safety, and that's a
17 legitimate concern and everybody wants to be a part of
18 the most safe way to do things. And, of course,
19 certainly your insurer will make sure you're doing best
20 practices otherwise you will not get insurance.

21 What kind of livened up the PUC -- it's just
22 my own opinion, I don't know this for a fact -- is that
23 the Auburn mill blew up, there was a natural gas line
24 that went out over there --

25 MS. EMERSON: Was it natural gas or propane?

1 MR. PY: Not the same products, no.

2 MR. PHILLIPS: That was natural gas?

3 MR. PY: That was natural gas.

4 MS. EMERSON: And that's already regulated?

5 MR. PY: Yes, everything in natural gas is
6 regulated by the PUC.

7 Was that helpful?

8 MS. EMERSON: Yeah. My experience with
9 propane is the guy comes and fills up and I fill up my
10 little container for the grill.

11 MR. PY: That's mostly the case. There are
12 some commercial facilities. Like the Civic Center has
13 some big tanks out back. You know, maybe you do want to
14 take a look at those, maybe you want to have a little
15 extra vision on that but not to the case where you have
16 three different agencies looking at the same exact
17 thing. It's a little over the top, that's all.

18 MS. EMERSON: Thank you.

19 CHAIRMAN STANLEY: I guess the local
20 planning boards have something to say about placement of
21 propane tanks, don't they?

22 MR. PY: They do.

23 CHAIRMAN STANLEY: In my business, we use
24 two fairly sizeable propane tanks to provide fuel for
25 autoclaves that we operate at pretty high BTU units.

1 And the Windham Board of Planning Appeals or whoever
2 said, well, since we're in an industrial park there in
3 that particular situation, there was no need for the
4 tanks to be any particular distance away from the
5 building. They were next to us and next to another
6 structure that didn't belong to us so they were very
7 tightly situated and they permitted that. And the state
8 fire marshal who examined the insulation raised no
9 questions about it. This was 20 years ago or more. I
10 recall -- talking about anecdotes and incidents -- that
11 one time, a very wintry day, probably in January or
12 February, the propane truck pulled out in front of our
13 lab to refill these tanks and there was a kind of a
14 slope running down from our front door into the driveway
15 area. It was a dirt area and it was covered with at
16 least an inch of ice over that entire thing. And I
17 looked out the window from my office and I saw this big
18 truck pull up there and he got out and started to walk
19 to get behind the truck to set up the pipe or the hose
20 going back. And, at that point, the big propane truck
21 began to slide sideways down the slope and I went under
22 the desk because I thought we were going to have a big
23 blow here and the driver just helplessly watched this
24 happening. Thankfully nothing did occur. The truck
25 slid slowly down probably 15 or 20 feet and just

1 stopped. The hose was long enough that he was able to
2 run it from that position back to the tanks. But I will
3 tell you, I thought for sure that was going to be it.

4 Well, thank you. I just wanted to interject
5 you.

6 Tom, do you have anything else?

7 MR. MERRILL: Jamie, what's your e-mail
8 address so I can add you to the list?

9 MR. PY: Sure, it's
10 Jamie@MaineEnergyMarketers.com.

11 CHAIRMAN STANLEY: Thank you so much for
12 your contribution, your work and we will be in touch
13 with you further.

14 MR. PY: Thank you very much.

15 CHAIRMAN STANLEY: Unless there is any
16 further information from the public which has dwindled
17 down to just a handful at this point, I want to say
18 thanks to our commissioners for your excellent work
19 today and wish all of you the best of the holiday season
20 coming up. I think we had a very worthwhile day thanks
21 to the participation of everybody that was here. Thanks
22 again and we will see you in the new year.

23

24 (Whereupon, the above-named hearing was concluded at
25 4:40 p.m.)

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C E R T I F I C A T E

I, Debra J. Fusco, a Notary Public in and for the State of Maine, hereby certify that on the 14th day of December, 2009, personally appeared before me the within-named persons to testify in the aforementioned cause of action and that the foregoing is a true and accurate record as taken by me by means of computer-aided machine shorthand.

I further certify that I am a disinterested person in the event or outcome of the aforementioned cause of action.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of December, 2009.

Debra J. Fusco

Court Reporter/Notary Public

My Commission expires: February 23, 2016

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