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LEGISLATIVE GUIDEBOOK

MAINE POLICY INSTITUTE

MAINE LEGISLATIVE GUIDEBOOK 2023

Matthew Gagnon
Chief Executive Officer

Nick Murray
Director of Policy

Jacob Posik
Director of Communications

Michael Quatrano
Director of Civic Engagement

Libby Palanza
Policy Intern, Summer 2022

“When your money is taken by a thief, you get nothing in return. When your money is taken through taxes to support needless bureaucrats, precisely the same situation exists. We are lucky, indeed, if the needless bureaucrats are merely easygoing loafers. They are more likely today to be energetic reformers busily discouraging and disrupting production.”

~Henry Hazlitt, Economics in One Lesson

About Maine Policy Institute

Maine Policy Institute is a 501(c)3 nonprofit, nonpartisan organization that conducts detailed and timely research to educate the public, the media, and lawmakers about public policy solutions that advance economic freedom and individual liberty in Maine.

Governed by an independent Board of Directors, Maine Policy relies on the generous support of individuals, corporations, and foundations, and does not accept government funds or perform contract work. With six full-time staff members and hundreds of individual supporters, it educates the public, engages legislators, and employs the media to shift public opinion toward public policy solutions that improve the lives of Maine citizens.

Over the past 20 years, MPI has testified hundreds of times before the Maine Legislature. Some of the organization's most notable victories include the largest tax cut in state history, historic welfare reforms that led to higher rates of employment, public sector pension reform that saved taxpayers more than \$1 billion, and financial transparency, including “sunshine” on the pay and perks of government employees. These positive changes are the direct result of Maine Policy’s work and generosity of its supporters.

Introduction

Maine Policy Institute is pleased to introduce the fourth edition of The Maine Legislative Guidebook, an overview of free market solutions to Maine's economic and political challenges.

This guidebook centers around Maine Policy Institute's three central themes: taxes, education, and health care. We discuss the most important public policy debates facing Maine, including solutions to poverty, spurring business growth, and reforming K-12 and higher education. After analysis of each issue, we offer concrete recommendations to achieve meaningful progress; some proposals represent small reforms, while others—like eliminating the income tax—constitute more substantial change.

As you and your legislative colleagues conduct the people's business in Augusta as the 131st Legislature, Maine Policy Institute welcomes the opportunity to serve as a vital resource.

Thank you for sharing our commitment to a freer, more prosperous Maine. The staff of Maine Policy Institute is eager to discuss these ideas in greater depth; please don't hesitate to contact us at (207) 321-2550 or contact@mainepolicy.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Gagnon", with a stylized flourish at the end.

Matthew Gagnon

Chief Executive Officer

A Note for New Lawmakers

You are here to serve Maine

It might seem obvious, but it is one of the facts most quickly forgotten by many legislators. Don't fall in love with the dome or view your job as a stepping stone of ambition. You are here to serve the people of Maine. Never forget it.

Be bold and stand for something

Many politicians believe that taking a bold or controversial stance on an issue is a dangerous thing to do. This is rarely true. Constituents respect responsive leaders who listen, care, and who have their best interest at heart. The people who sent you to Augusta actually appreciate passion and are unfazed by lawmakers who disagree with them on issues, as long as you are perceived to be a genuine advocate for them.

Be skeptical

Question everything. As a lawmaker, you will be given an avalanche of studies, data, statistics, and expert testimony. Be aware that everyone in Augusta has an agenda, and that statistics and data can be easily manipulated. Political interest groups and politicians are less interested in the truth than they are the acquisition of power and authority for their own purposes.

Sometimes trying to help can actually hurt

We all want to help solve problems. Unfortunately, our tendency to offer solutions that use government power often does little to help, and simultaneously creates new problems.

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Improving on the Success of Maine's Charter Schools



The Problem

Charter schools in Maine are held back by unnecessary restrictions despite their demonstrated success and capacity to improve educational outcomes, particularly among special needs, poor and disadvantaged students. Recent legislation signed into law permanently caps the number of charter schools that can operate in Maine at 10, and limits the amount of students that can attend virtual charter schools.

Analysis

Charter schools are some of the most promising new developments in the quest to improve Maine's public school system. They foster a productive relationship between parents, teachers, and students, and are better able to adapt and respond to the unique needs of each student.¹

A brief description of charter schools from the Maine Charter School Commission (MCSC) website:

"Charter schools are public schools of choice [that] are publicly funded..., created and governed by volunteers in a nonprofit organization, and operated independently of the traditional public school system. Charter schools have some flexibility that traditional public schools may not have over decisions concerning curriculum and instruction, scheduling, staffing and finance. In return for this flexibility, charter schools are held accountable to the terms of contracts [and] must adhere to all applicable federal laws, health and safety laws, and the same academic standards to which all public schools are accountable."

A recent analysis by the Center for American Progress found that “high-quality and accountable charters are successfully improving student achievement and closing the opportunity gap for low-income students of color through innovation within the public education system.”² Students who attend charter schools are noted to be more productive, well-rounded, community-minded, and better able to contribute as skilled workers—which are desperately needed in Maine.³

According to a study by the University of Tennessee, charter schools are showing favorable results in educating students in math, science, reading, and almost every other academic area. Assessments conducted shortly before the onset of the pandemic revealed that 91% of charter schools authorized by the SUNY Charter Schools Institute in New York outperformed their traditional public school counterparts in math, and 88% did so in English.⁴ Charter schools utilize fewer resources than traditional public schools and serve a higher percentage of lower-income and minority students.

But unfortunately, Maine has placed a strict cap of 10 on the number of charter schools allowed to educate our children. Predictably, this cap is proving to be far too low. As of this publication, all 10 slots for charter schools have been filled, with every school at nearly full enrollment, and nearly 600 potential students left sitting on waiting lists.

Some of the most serious charges leveled against charter schools in Maine since their inception have been that charter schools underperform, they are a drain on traditional public education funds, and that the Maine Charter School Commission (MCSC) can’t perform both application review and current charter school evaluation. Available evidence suggests these charges are off base.

In a recent interview with the executive director of the MCSC Bob Kautz, he stated: “The original application and authorization process for charter schools ensures the standards charter schools *must keep* (emphasis added) in order to maintain their status. Charter schools are under constant rigorous scrutiny and have a comprehensive intervention protocol to assure they are achieving

In a recent interview with the executive director of the MCSC Bob Kautz, he stated: “The original application and authorization process for charter schools ensures the standards charter schools *must keep* (emphasis added) in order to maintain their status. Charter schools are under constant rigorous scrutiny and have a comprehensive intervention protocol to assure they are achieving these goals.”

If a charter school is not maintaining performance standards agreed on in their initial authorization agreement, they become sanctioned and put on probation. If they do not improve, they lose their status as a public charter school and are subsequently closed.⁵ In short, direct accountability ensures performance levels are high or else they are shut down, a process to which current traditional public schools need not adhere.

As far as funding, any traditional public school has the ability to increase their budget upon approval by their school board and local residents, without the added performance scrutiny required for charter schools. Traditional public schools are allowed to raise and keep revenue above their allotted 45% of the state school funding formula, something charter schools cannot do.⁶ Therefore, charter schools are not “diverting funds” from traditional public schools. As long as charter schools are meeting their criteria and being re-authorized, they are serving the public school system as intended.

Furthermore, more than 2,600 students, representing 283 municipalities, are currently enrolled in charter schools, such that nearly every charter school is at capacity and the statewide waiting list has grown to nearly 600 students.⁷ These numbers, coupled with the scrutiny of maintaining a charter school authorization, reflects the fact that charter schools are working, successful, and meeting the needs of their students and parents. It also reflects the growing need for more charter schools.

As for the supposed “inability” of the Commission to both review applications and evaluate existing charter schools, the commission has a specific timeline in state statute (90 days from submission

deadline) to issue approval or denial. Since the inception of Maine Public Charter Schools in 2011, 26 schools have applied, with one school withdrawing its application, and as of this publication, 10 have been approved.⁸ An average of 2.5 are processed a year within that 90-day period, with the rest of the year dedicated to evaluating existing schools. In light of the current success of our existing public charter schools, and the results of thorough reviews conducted by the National Association of Charter School Authorizers (NASCA)⁹, the MCSC is clearly performing its duties successfully.

That said, regardless of the cap, SAUs should be granted the ability to authorize charter schools at their discretion. During the ten year transition period, “local school boards and collaboratives of local school boards” were allowed to continue approving charter schools after the limit had been reached.¹⁰ It was only with the passage of L.D. 307 in 2019 that this privilege was revoked.¹¹ Therefore, the Legislature should reinstate SAU’s capacity to authorize charter schools irrespective of the limitations placed on the MCSC.

Additionally, institutions of higher education should be allowed to authorize new charter schools without regard for any statewide cap that may be in place. Doing so is not a new concept. States across the country have granted a variety of different entities the ability to authorize charter schools. Sixteen states currently allow higher education institutions, or HEIs, to serve as authorizers, and three states have extended this privilege to non-profit organizations, or NPOs.¹² As of the 2018-19 school year, 10.4% of students attending charter schools in the country are enrolled in HEI-authorized institutions and 2.7% in schools authorized by NPOs.¹³

With more than 90,000 students, the aforementioned State University of New York’s (SUNY’s) Charter Schools Institute has proved highly successful, with the majority of its schools substantially outperforming their neighboring traditional public schools.¹⁴ In Minnesota, the nonprofit organization Friends of Education has authorized 12 high-performing charter schools

which, combined, serve more than 10,000 students.¹⁵ Four schools operating under the auspices of the Friends of Education have been named National Blue-Ribbon Schools by the U.S. Department of Education since 2015, and the majority of their schools are performing well-above the state average on a wide range of indicators, including reading proficiency, college readiness, and college enrollment.¹⁶ If done properly, the incorporation of HEI authorizers can play an important role in the curation and establishment of high-quality, high-performing, and highly-innovative charter schools.¹⁷

Legislators should recognize that placing a cap on the number of charter schools that may operate in Maine is counterproductive to economic growth and academic excellence. They should take steps to remove this oppressive red tape. Legislators should also restore the ability of local SAUs to authorize charter schools regardless of restrictions on the MCSC and extend similar authorization rights to higher education institutions and education-focused nonprofits. Allow Maine families access to greater education options and allow Maine's economy to have access to more qualified workers.

Recommendations

- Remove the cap on the number of charter schools that may be approved by the Maine Charter School Commission.
- Raise the cap on charter schools by one school annually. If that spot remains open by the end of the year, it remains the successive year's open spot.
- Raise the current limit on the number of charter schools by one whenever that limit is reached.
- Allow School Administrative Units (SAUs), education-focused nonprofits, and institutions of higher education to authorize new charter schools, regardless of a statewide limit.

Ensuring Access to Quality Education



The Problem

Too often, a child's educational opportunities are determined by his or her parents' income and ZIP code. For some students, the education they would receive in public schools does not adequately address their individual needs. Maine parents have limited choice, and government intervention is consistently restricting the few options they do have. The one-size-fits-all approach to public education has failed Maine students, but enacting policies like Education Savings Accounts (ESAs) and Open Enrollment can empower parents and students to find their best educational option.

Analysis

Every parent should have the right to choose what school best meets their child's needs and have their child attend that school, provided that parents offset the cost of some services, such as transportation to and from school.

In several parts of the country, ESAs have been used successfully to improve educational opportunities and outcomes for low-income children. A 2012 report by the Goldwater Institute found that ESAs represent "the most innovative solution to provide all America's children with better opportunities."¹⁸ A follow up report published in 2019 confirms that enrollment in Arizona's ESA program has grown to over 6,400 students from 144 when it was first created. It has saved taxpayers' money and has actually *increased* per pupil public school funding.¹⁹ Over the past ten years, the number of students using ESAs has steadily increased, with total program participants reaching nearly 30,000 in 2021.²⁰

ESAs expand parental choice in selecting the best educational program for their children by providing state-funded savings accounts that families use for education expenses. Parents operate the accounts and have discretion to purchase services and materials to optimize their child's education.

The funds from ESAs can be used for private school tuition, textbooks, online classes, tutoring, college tuition, or individual public school classes and extracurricular programs. Because the accounts allow families to choose from many different education services, a child's education can be precisely tailored to his or her needs. For students with special needs, such as children with autism, cerebral palsy, or hearing or vision impairments, parents can use the funds to send their children to a school that specializes in addressing those challenges.

ESAs can significantly reduce government education spending, saving taxpayers millions of dollars. Instead of funding school systems, the state provides funds directly to families and audits every purchase. Participating families then report expenses to the state, and must account for every penny spent.

Opponents of school choice consistently argue that public school enrollment numbers would decline with public school choice, thus resulting in budget cuts. This is simply not the case. In Arizona, one of the first states to enact ESAs, the government deposits 90% of student funds from the school funding formula into an account that is available for participating students. The state's department of education reserves some of the remaining 10% of student funds to administer the program and saves the rest.²¹

For every Arizona student who opted for an ESA in 2019, local school districts got \$654 back, meaning that more than \$4.2 million in additional funding was made available to support public school students as a result of the state's ESA program.²²

A Maine Policy analysis developed a hypothetical ESA program which allowed Maines SAUs to contribute a state-determined percentage of either their average per-pupil spending level or that of the state per-pupil average per ESA-enrollee. At 93% of per-pupil spending, if 5% of students enroll in the program, distributed evenly across SAUs by population, districts would receive an average of about \$240 per ESA-enrollee, more than \$39 million in additional investment, to educate fewer students.²³

Underlying these arguments is a recognition that some schools are underperforming, and government-mandated attendance is the only thing keeping them afloat. While some unsatisfactory schools will likely close, there is no reason that families should be forced to use a service which is failing them. Education should primarily serve students, not school systems.

Another solution to school choice that is gaining traction in the United States is Statewide Open Enrollment policies (otherwise known as Controlled Open Enrollment, or Statewide Enrollment Options). Almost all states in the U.S. have some component of Open Enrollment (47 states),²⁴ including Maine, but most are very limited in nature. Some states, however, have truly made the most of the process; Maine should follow suit.

The premise behind Statewide Open Enrollment policies is that it offers a public school choice option, allowing students and parents to enroll in schools that are not within their residential district. Policies vary, but as long as a receiving school has not reached capacity (either on a first-come-first-serve basis or by way of a lottery system wherein a school's capacity is listed on their public website), a student can attend any school in the state, subject to some restrictions.²⁵ Voluntary Open Enrollment allows local school districts to decide whether to participate, but may further exacerbate limitations in access to quality schooling, contrary to the goal of the policy.²⁶

Many states across the country have implemented such Statewide Open Enrollment programs. For example, in Minnesota’s Open Enrollment program, once a student is accepted in the program they may attend the receiving school through high school graduation. Also, the student’s siblings will receive higher consideration at that same receiving school when a lottery is held, if spaces are limited.

Florida has a similar law, but there, districts in Florida must provide preferential treatment in their controlled open enrollment processes to dependent children of active duty military personnel whose move resulted from military orders, children who have been relocated due to a foster care placement in a different school zone, and children who move due to a court-ordered change in custody due to separation or divorce, or the serious illness or death of a custodial parent, as well as students residing in the district.²⁷

Arizona law requires school districts to “provide transportation limited to not more than thirty miles each way to and from the school of attendance” of the students they educate.²⁸ This may be a practical model for Maine as well, given our rural nature and high costs of transportation and road maintenance.

A local school unit should always strive to be the best it can be. With Open Enrollment policies, public schools are incentivized to compete for students. To most effectively meet their educational needs, students should have the right to attend any school that is willing to have them. Maine should enact Open Enrollment to allow parents and students the flexibility to secure the education best suited for them.

A 2016 review showed that 14 of 18 studies using the method of random assignment found that greater parental choice improved academic outcomes, particularly among those from disadvantaged backgrounds or poor households.²⁹ Parents interested in finding better options for their children should be empowered to do so. Thankfully, the arc of history is bending toward greater opportunity.

In June of 2020, the United States Supreme Court ruled in *Espinoza v. Montana Dept. of Revenue* that state-sponsored school choice programs, specifically a tax credit scholarship program in Montana, must not discriminate against providing tuition to some schools because they are religious. The court ruled that policy infringed on the First Amendment rights of parents to choose an appropriate school for their child within the state’s program.³⁰

The court again supported this principle in the June 2022 ruling on *Carson v. Makin* specifically regarding the sectarian exclusion in Maine’s town-tuitioning law, the second-oldest private school choice program in the nation (behind Vermont).³¹ Town-tuitioning allows students residing in towns without a school or a contract with a school to be reimbursed up to the state average per-pupil spending amount for tuition to a school of their choice.³² The state allows towns to provide tuition to any accredited private school, except for those which are sectarian.³³

In the majority opinion in *Carson*, Chief Justice John Roberts declared that, “Maine’s ‘nonsectarian’ requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment...Regardless of how the benefit and restriction are described, the program operates to identify and exclude otherwise eligible schools on the basis of their religious exercise.”³⁴

Maine lawmakers must eliminate the unconstitutional “sectarian exclusion” to comply with Supreme Court precedent and end state discrimination against religious families’ private school choice in the administration of a publicly-available school choice benefit.

Recommendations

- Create an ESA program eligible to all public school students.
- Allow school districts to participate in a statewide Open Enrollment program.
- Remove the sectarian exclusion from Maine’s town tuitioning program.

Reducing Costly School Administration



The Problem

The cost of Maine's K-12 education system has risen sharply over the last decade. During the 2015-16 school year, total expenditures on elementary and secondary education exceeded \$2.2 billion. Just five years later, total expenditures exceeded \$3 billion.³⁵ Since 1999-2000, inflation-adjusted per-pupil spending in Maine has increased more than 43%.³⁶ These trends have continued despite declining enrollment and various efforts to maximize efficiencies and control cost growth. Yet little concrete action has been taken to shrink Maine's vast educational bureaucracy, which accounts for a sizable portion of total education-related spending.

Analysis

Despite unprecedented taxpayer investments in Maine's K-12 public schools, educational outcomes have not measurably improved in recent years.³⁷ In fact, among high school students, test scores and graduation rates have plateaued over the past few years, and college enrollment rates among graduating seniors dropped by nearly 10% between 2015 and 2020. Though numerous factors influence our students' performance, there can be little doubt that the progressive decline in bureaucratic efficiency in Maine has contributed to higher taxpayer spending without appreciable improvements on key metrics.

To be sure, school administrators perform many tasks that are essential to the functioning of Maine's K-12 school system of roughly 177,000 students. But there is ample evidence that Maine's educational bureaucracy is far too bloated and inefficient to justify the hundreds of millions of dollars needed to sustain it each year. A 2013 study found that from 1992 to 2009, the number of administrators and other non-teaching staff in Maine increased by 76%, even as total enrollment fell by 11% and teacher

employment rose by only 3%.³⁸ This disparity between changes in enrollment and bureaucratic growth was the largest in the nation.


The disproportionate size of our school administration apparatus is immediately apparent when Maine is compared to other states. In 2018, Maine ranked tenth-highest in terms of the number of high-level administrative staff per 10,000 students. Maine had 35 officials and administrators for every 10,000 school enrollments, compared to about one in Nevada and Louisiana. Even states known for their complex public school systems, such as California and New Jersey, had far fewer administrators than Maine; California had six and New Jersey had 10 for every 10,000 students.³⁹

There is much to gain from streamlining our public school administration. Since payroll costs account for a significant portion of public education expenses, shrinking the administrative workforce could free up financial resources to be redirected to more productive ends, ideally closer to the classroom.

Recommendations

- Require or incentivize the consolidation of school administrative staff based on total student enrollment.
- Implement a cap on district-level administrative costs within the state's share of education funding.

Free Speech at Institutions of Higher Learning



The Problem

The current state of freedom of speech and expression on college campuses is broken. Increasingly, America's colleges and universities have retreated from their historical position as bastions of free speech to become some of the most insular and least tolerant institutions in our society.

According to the Foundation for Individual Rights in Education (FIRE), a non-partisan group dedicated to defending students' constitutional rights on college campuses, nine-in-ten American colleges restrict free speech on campus.⁴⁰

Analysis

Worse yet, the erosion of free speech is becoming more acceptable with each new generation. A Pew Research Center poll found that 40% of millennials believe the government should be able to prevent individuals from making offensive statements about minority groups in public.⁴¹ In contrast, only 12% of the Silent Generation, 24% of Baby Boomers and 27% of Generation X believed such speech should be prevented by the government.⁴² It is troubling that more and more people believe the government should have a role in limiting what individuals have a right to say in public.

But the problem doesn't end there. Even when explicit policies don't prevent students from exercising their free speech rights, campuses often nurture an environment in which new or controversial ideas are unwelcome and discouraged. For example, according to Gallup, "a slight majority of students, 54%, say the climate on their campus prevents some people from saying what they believe because others might find it offensive."⁴³ As of 2020,

60% of college students felt unable to express their genuine opinions out of fear for how fellow students, professors, and school administrators might respond.⁴⁴ As Jeffrey Herbst, former president of Colgate University and now president of the Newseum, has observed: “with little comment, an alternate understanding of the First Amendment has emerged among young people that can be called ‘the right to non-offensive speech.’”⁴⁵ Contrary to all American jurisprudence, the chant “Hate speech is not free speech!” is common on college campuses.

This shift in attitudes was concisely summarized in a recent op-ed in the *Des Moines Register* by David Leslie, chancellor professor of education (emeritus) at the College of William and Mary:

“Orderly protests and open debates are legitimate exercises of free speech. But speech that interferes with the institution’s commitment to effective teaching and learning – hate speech, dogmatic intransigence, personal invective, libelous or slanderous public expression – may all detract from an effective learning environment.”⁴⁶

But in empowering government education officials to silence speech perceived to be hateful or dogmatically intransigent, we erode our founding principles and stifle the discussions that allow our society to grow and prosper.

The University of Maine System is the primary network of public post-secondary institutions in the State of Maine and consists of seven schools. The University of Maine System includes the University of Maine, University of Maine at Augusta, University of Maine Farmington, University of Maine at Fort Kent, University of Maine at Machias, University of Maine at Presque Isle, and University of Southern Maine.

In June 2019, FIRE chose the University of Maine’s free speech and assembly policy as their targeted Free Speech Code of the Month. FIRE raised concerns regarding a provision in the university’s student handbook that requires students to notify the Chief of the

University of Maine Police at least three days before holding expressive activities in outdoor areas of campus.⁴⁷ While the requirement to notify campus police is likely to further the university's goals of preserving order and security in some circumstances, it restricts students' rights to assemble in a public forum. In addition, FIRE contends that the three-day policy may discourage students from expressing themselves on campus because approaching the Chief of Police could be intimidating for students, especially if they're broaching controversial subjects such as police violence, crime policy, or drug laws. The University of Maine's policy is needlessly broad.

As of April 2019, at least 14 states had passed the Campus Free Expression Act (CAFE Act) to prevent public colleges and universities from trampling on students' First Amendment protections.⁴⁸ The passing of the CAFE Act in Maine would prevent Maine's public colleges and universities from designating free speech zones or otherwise restricting expressive activities to a particular outdoor area of campus.

While changing campus policies is crucial to protecting the free speech rights of Maine's college students, reforms can only have limited impact until young people re-embrace the true meaning of the First Amendment and work to foster an open and inclusive environment where all views are permitted. To that end, Maine's middle and high schools should actively emphasize the value of constitutional liberties.

Recommendations

- Enact the Campus Free Expression (CAFE) Act.⁴⁹
- Direct the University of Maine System to review its free speech policy to ensure genuine free expression on its campuses.

Fixing Maine's Broken Ballot Initiative Process



The Problem

In recent years, Maine's ballot initiative process has been exploited by outside interest groups who, largely without formalized opposition, dump millions of dollars into Maine and use our state as a laboratory for complex, unproven policies that could not withstand the deliberative scrutiny of the Maine Legislature; thus undermining representative government.

Analysis

Maine's ballot initiative process, enshrined in the Maine Constitution, is an important provision that gives the people of Maine the direct power to circumvent the Legislature to enact or abolish laws. Yet that power is meant to be used sparingly in times when the overwhelming will of the people is not adequately represented by their elected leaders.

However, since its adoption in the early 20th century, the ballot initiative process has increasingly become a tool of special interests that are unable to move their agenda through the Maine Legislature. During the 1950s and 1960s, not a single citizens' initiative appeared on a ballot in Maine, compared to 16 initiatives from 2000 to 2010 and five in 2016 alone. Although at first glance, this may appear to be indicative of greater citizen involvement in state politics, a closer look at the primary source of funding for these ballot initiatives suggests otherwise. A 2018 analysis by Maine Policy Institute found that, between 2009 and 2017, 71% of the \$81.3 million contributed to Maine ballot initiative campaigns originated from out-of-state sources.⁵⁰

The Maine Constitution states that the number of signatures collected for any proposed ballot measure must not be less than 10% of the total vote cast for Governor in the preceding gubernatorial election. However, Maine—unlike many other states—has no requirement that the signatures come from geographically-diverse areas. Since the early 20th century, when the initiative and referendum laws were enacted, Maine’s demographic landscape has changed dramatically.

In 1910, our population was much more evenly distributed, making it less likely that one region could impose its will on the rest of the state. Because of increasing urbanization and population declines in rural areas over past decades, petitioning groups focus a significant portion of their signature collection efforts in Southern Maine, leaving interests in other areas of the state unrepresented at our ballot box.

Maine is one of twenty-four states which currently allow some form of citizen-initiated ballot referenda. Thirteen of the 24 require signatures to be gathered from multiple parts of the state, preventing petitioners from gathering signatures in only the most densely populated urban areas.⁵¹ These provisions ensure all voters, not just those in urban areas, have a say in which proposals achieve ballot status.

In addition, several states impose checks and balances on their initiative and referendum processes that are not employed in Maine. These measures include restrictions on the breadth of subject matter one initiative may cover, as well as vote threshold requirements for passage of initiatives and constitutional amendments. Enacting these sorts of checks on the process would reduce the influence of outside groups by ensuring the interests of all Maine people are represented at the ballot box. Inherently, these reforms will require petitioning groups and outside interests to pursue policies that have broad appeal among citizens in all corners of the state, and require funds to be spent more deliberately in order to influence outcomes at our ballot box.

Recommendations

- Adopt a resolution to amend the Maine Constitution to require 50% of the signatures for a ballot measure come from residents of each congressional district.
- Adopt a resolution to amend the Maine Constitution that requires signatures collected for any proposed ballot measure come from each Senate district, and must not be less than 10% of the total vote for Governor cast in the preceding gubernatorial election in each Senate district.
- Impose a rule that requires initiatives to encompass only a single subject.
- Impose subject restrictions that bar initiatives from dedicating revenues or making or repealing appropriations.
- Disallow unconstitutional measures from appearing on the ballot.
- Increase the threshold of affirmative votes required for constitutional amendments to pass at the ballot box.
- Print fiscal impact statements directly on each ballot.

Ending Taxpayer Subsidized Political Campaigns

The Problem

As policymakers have chased the illusory and unattainable goal of “clean” elections, beyond the reach of wealthy corporate donors or billionaire backers, it has become clear that these efforts are costing Maine taxpayers millions of dollars without improving the competitiveness or transparency of elections.

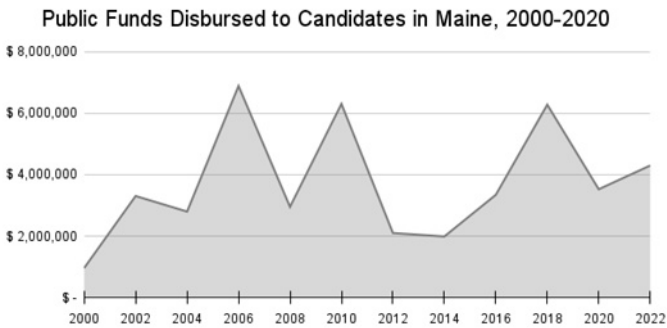
Since the passage of the Maine Clean Elections Act (MCEA) on the 1996 statewide ballot, more than \$43 million has been spent on taxpayer-funded political campaigns. In 2018, over \$6 million in taxpayer funds went to political campaigns, a 90% increase from 2016 largely due to participating gubernatorial candidates.⁵² Mainers are supporting a system that has failed to increase electoral competitiveness and has also failed to diversify the Legislature. Despite the MCEA’s stated goals, negativity in campaigns and special interest money have never been more widespread in Maine politics.

Analysis

The MCEA, enacted in 1996 through a ballot initiative, was designed to provide public financing to candidates seeking state office. However laudable its aims, the MCEA, since its inception, has wasted taxpayer dollars, undermined our democratic process, and opened the door to abuse and fraud.

Not only does the MCEA force taxpayers to financially support candidates with whom they disagree, but the program has cost Mainers millions of dollars over the last decade. Though the MCEA has often been touted as a way to level the playing field between candidates, a thorough review of recent Maine elections revealed that “electoral competitiveness in Maine has not been appreciably

affected by MCEA.”⁵³ The emergence of PACs and outside special interest groups has allowed “clean” candidates to receive taxpayer funding while simultaneously continuing to enjoy the support of deep-pocketed donors.



Supporters of the MCEA often claim that public campaign financing will return our politics to the hands of the people and weaken the influence of career politicians. But an analysis of the longitudinal composition of the Maine Legislature reveals that this is not the case.

The members of 118th House of Representatives in Maine, who took office in 1996 before the MCEA took effect, included 23 educators, 16 business people, seven attorneys, four farmers, two lobstermen, five healthcare workers, and three homemakers. Thirty-two members were retirees. In all, 96 members had previous legislative experience and had served a cumulative total of 340 years.

In 2014 for example, nearly two decades later, the members of the 127th Legislature’s House of Representatives included 13 educators, 19 business people, six attorneys, three farmers, ten healthcare workers, three carpenters, and two photographers. Twenty-six members were retirees. Ninety-eight legislators had previous legislative experience and had served a total of 453 years. In short, since the MCEA’s enactment the Legislature has gotten older, politicians are serving longer, and turnover has declined.

Recommendations

- Repeal the Maine Clean Elections Act.
- Repeal the 2015 expansion of Maine's Clean Elections Act.
- Restrict eligibility for public-financing to first-time candidates with no legislative experience.
- End public-financing of gubernatorial candidates.

Leveling the Playing Field for Alternative Candidates



The Problem

Winning an election is hard work, but for some candidates in Maine, the real battle begins with the fight to get their name on the ballot in the first place. Whether it's getting your name in front of voters on election day or establishing a new alternative political party, those who do not identify as Democrats or Republicans and want to get involved in Maine's government are likely to encounter more challenges than their major-party counterparts.

Analysis

For Democratic and Republican candidates, getting on the ballot is relatively straightforward. They must obtain the signatures of anywhere between 25 and 2,000 members of their party, depending on the office for which they are running.⁵⁴ Given that there are currently more than 300,000 voters registered with each of these two parties, even a 2,000-signature threshold is not likely to be insurmountable for a serious candidate.⁵⁵

Candidates who do not wish to identify themselves with either of the two major political parties, however, face a tough decision when they initially consider running for office. They can either register as a member of one of the existing recognized alternative parties – the Libertarian Party or the Green Party – or they can opt to run as a non-party candidate.

Despite the significantly smaller size of their parties, Libertarian and Green Party candidates are expected to meet the same requirements as members of the two major parties.⁵⁶ Consequently, these candidates must obtain the signatures of a dramatically higher proportion of their party than do Democrats and Republicans.

For candidates who decide to remain unaffiliated, Maine State Law requires that they obtain double the number of signatures than those who are registered with a recognized party.⁵⁷ These signatures, however, can come from any qualified voter regardless of their party affiliation. Despite having access to a deeper pool of voters, needing to meet this higher bar may be prohibitive for some, as collecting signatures can be a remarkably costly process, especially in recent years.⁵⁸

In all cases, candidates are only notified whether or not the signatures they have collected are acceptable after “the filing deadline and challenge period have passed.”⁵⁹ By not allowing candidates to collect additional signatures, should problems be discovered during the verification process, well-meaning candidates may be unjustly barred from appearing on the ballot.

Establishing a new political party also poses a challenge. Those who wish to do so in Maine face a roughly six-year process.⁶⁰ Between December 1 and December 31 of even-numbered years, ten or more unaffiliated registered voters may “file a declaration of intent to form a party with the Secretary of State.” At some point on, or before, January 2 of the next even-numbered year, “the applicants must file a certification” that they have enrolled at least 5,000 voters in their proposed political party. Within 15 days, the applicants will be notified if their party has met the requirements to be officially recognized and granted permission to participate in the upcoming primary election.

In order to maintain this active status, nascent political parties are required to double their enrollment to 10,000 before the second general election held after their initial qualification.⁶¹ Until just this past year, voters would be automatically unenrolled without notice from parties that failed to reach this threshold.⁶²

In 2019, the Maine Libertarian Party sued the State after approximately 6,000 registered Libertarians were unenrolled when the party failed to reach the requisite enrollment threshold in time.^{63, 64} U.S. District Judge Lance Walker ultimately ruled that automatic unenrollment was unnecessarily “burdensome to small

parties” and “unconstitutional” in the state.⁶⁵ He did, however, uphold the 10,000-voter requirement, meaning that a party which falls short would not be allowed to partake in that year’s primary election, but voters would be allowed to remain registered members.

Although Maine is home to Sen. Angus King, one of only two Independents serving in the United States Senate, succeeding outside the confines of the two major parties appears to be a hard-won achievement in the State.

Especially on a local and state level, two-party partisan politics may be more counterproductive than it is informative. If voters simply fall back on their preconceived notions about the letter placed next to a candidate’s name, they may be more likely to gloss over their actual positions or ignore them altogether. This is not to say that understanding a candidate’s broad ideology is not useful, but under the current system, our heuristics may be misguided. If would-be Libertarian, Green, and Independent candidates are feeling forced to choose between labeling themselves as Democrat or Republican in hopes of actually gaining a spot on the ballot, then how much do those labels really tell us?

Furthermore, prospective candidates may be discouraged from running in the first place if there is no real place for them in the system. By creating an environment that is more hospitable to those who fall outside the confines of the two-party system, Maine has the opportunity to allow citizens to elect the candidates who best represent their values and interests. Barriers to entry should be lowered such that all serious candidates have the ability to get their name in front of the voting public so that Mainers can decide for themselves who is best equipped to serve as their voice in government.

Recommendations

- Adjust candidate signature thresholds to be proportional to party enrollment.
- Lower the signature threshold for non-party candidates so as to make it a more viable option for those who do not identify with any recognized political parties.
- Require the Secretary of State to notify candidates whether or not their nomination petitions have been accepted prior to the filing deadline and challenge period, so long as signatures are submitted to the Secretary of State sufficiently early.
- Shorten the minimum amount of time needed for a new political party to be officially recognized by the State and allowed to participate in primary elections.

Dismantling Ranked-Choice Voting



The Problem

In the 2016 general election, outside interest groups like FairVote pushed for passage of a ballot initiative to institute ranked-choice voting (RCV) in Maine. This voting process allows voters to rank multiple candidates in order of preference on one ballot and, contrary to the Maine Constitution, determines winners based on the majority of votes cast rather than a plurality. Often referred to as “instant runoff voting,” statewide RCV has been pushed in other states like Alaska and Massachusetts since 2020. With the implementation of RCV, Maine employs two separate voting methods, making our elections more expensive and voting more confusing, to achieve similar results that would be reached under the traditional system.

Analysis

Prior to Maine’s use of RCV in the 2018 primary elections, the only other time in United States history that RCV was implemented in a statewide election was during a 2010 special election in North Carolina to fill an appellate court judge seat. Thirteen candidates ended up on the ballot, and it took over a month to announce the winner after two rounds of elimination and a recount. Realizing the chaos and uncertainty that could result from hundreds of races being decided by RCV, the North Carolina legislature repealed the RCV law ahead of the 2014 elections.

Portland, Maine, is one of the few cities that have adopted RCV for municipal elections. In 2011, Portland held an election for the office of mayor using RCV. Fifteen candidates were on the ballot, and it took fifteen rounds of vote distribution and two whole days to declare a winner.

Because of increased complexity, many voters struggle to understand and properly fill out RCV ballots.⁶⁶ When a voter has not ranked one of the two final candidates, their ballots become “exhausted” and are not counted in the final tally. As a consequence of this phenomenon, more than 60% of candidates who win RCV elections don’t actually win a majority of votes cast.⁶⁷

In addition to the challenges and costs of implementation, RCV is unlikely to improve the overall tone of our elections. Although RCV may discourage candidates from attacking each other directly, as a winning candidate will need to be the second- and third-place choice of voters who support their rivals, it will only end up augmenting the role of unaccountable third-party groups when it comes to negative campaigning. One analyst has actually pointed to the 2018 Maine gubernatorial race as an example of how the attitudes of candidates actually remain largely unchanged despite the supposed-incentives of RCV.⁶⁸

Oftentimes, despite the claims often made in favor of ranked choice voting, the results produced by the lengthy and unwieldy process are the same as they would have been had the election been run as usual. In Maine’s 2018 gubernatorial primary elections, it took more than a week for the Maine Department of the Secretary of State to declare candidate Janet Mills the winner of the Democratic gubernatorial primary election despite Mills obtaining a plurality of the votes cast on Election Day. Under the traditional one person one vote system, Mills still would have been declared the winner of this race. An analysis of nearly 400 single-winner ranked-choice voting races in the U.S. since 2004 found that 97% of candidates who ultimately won RCV elections also won a plurality of the first-place ballots, meaning that the same results could have been achieved in a far less confusing and less expensive manner.⁶⁹

Perhaps most importantly, the convolution and complexity of RCV’s convoluted vote tabulation system will deter voters and erode confidence in our elections. Not only is it a costly and cumbersome process, but when RCV does produce results that disagree with the first-round plurality, it is highly questionable whether it is actually more reflective of “the will of the people.” It has been demonstrated

that RCV can lead to candidates emerging victorious despite occupying a low ranking on the majority of ballots. Furthermore, it is possible for a popular candidate to be ranked second by the vast majority of voters, yet be eliminated immediately on account of not receiving enough first-choice votes.⁷⁰

If policymakers want to encourage electoral participation and combat the general distrust of government, they should be making our elections simple and clear. RCV is an unproven experiment that threatens to undermine our fundamental democratic values.

Recommendation

- Fully repeal Maine's ranked-choice voting law.

Implementing Voter ID Requirements



The Problem

Maine is one of just 15 states that have not enacted some form of voter ID laws, which require voters to provide identification at polling stations in order to vote in elections.⁷¹ While some fear that voter ID laws disenfranchise voters and suppress voter turnout, states have proven that these laws can be implemented in ways that alleviate concerns while still upholding the sanctity of free and fair elections, substantially eliminating the possibility of voter fraud.

Analysis

Approximately 60% of US voters live in states that require some form of photo identification in order to cast a ballot, according to the Congressional Research Service. Of the states which have voter ID laws on the books or coming into effect in 2023, 16 allow those without IDs to cast a ballot through alternative means, while 19 strictly enforce ID requirements. Since 1996, the number of states requiring voter IDs has tripled.⁷²

In 2001, the National Commission on Federal Election Reform, or the Carter-Ford Commission, studied aspects of the nation's voting process and suggested that states improve "verification of voter identification at the polling place" by requiring voters "provide some form of official identification, such as a photo ID issued by a government agency."⁷³ Four years later, the same body issued similar findings, expanding its recommendations to include that states provide voter ID cards at no cost to voters without official identification.⁷⁴ Since then, 23 states have successfully passed or amended voter ID laws, many of which contain specific provisions to mitigate the concerns of disenfranchisement and reduced voter turnout.

Georgia, which originally passed voter ID in 1997, moved to strict photo ID requirements in 2005. Implemented in 2008, after clearing legal challenges, the law allows Georgians to use any of the following forms of photo identification to vote in elections:⁷⁵

1. a Georgia driver's license (valid or expired),
2. a valid state or federal government-issued photo ID (including a free voter ID card),
3. a valid US passport,
4. a valid photo ID from any branch, department, agency, or entity of federal, state, county or municipal government,
5. a valid U.S. military photo ID; or
6. a valid tribal photo ID

In the four years after Georgia implemented its voter ID law, turnout among Black and Hispanic voters outpaced the overall population growth among those demographics.⁷⁶ Even through 2022, turnout in the state continues to break records.⁷⁷

A national study published in the National Bureau of Economic Research (NBER) in 2019 observed over one million voters across eight years and found no statistically observable change in voting behavior like registration and turnout rates related to voter ID laws.⁷⁸

Maine had the chance to enact similar legislation in 2018, but the measure was never referred to committee. The law would have authorized Mainers to use official identification cards issued by Maine colleges, the state or federal government, or electronic benefits transfer cards as acceptable forms of identification to vote in elections. It would have also provided free voter IDs to those without proper identification and permitted Mainers to cast provisional ballots without identification.

According to recent polling, 80% of Americans are in support of requiring voters to show some form of photo ID in order to cast their ballots.⁷⁹

Maine should move forward with voter ID requirements that are inclusive to all Maine citizens in order to ensure public confidence in our elections.

Recommendation

- Enact photographic voter ID legislation to strengthen Maine's election laws.

Resisting Public-Owned Power

The Problem

According to data from the US Energy Information Administration, Maine has the fifth-highest overall electricity price in the nation, behind Rhode Island, Connecticut, Alaska, and Hawaii. All six New England states fall in the top 11 most expensive.⁸⁰ For the second time in two years, the Maine Public Utilities Commission (PUC) in November 2022 accepted significant price hikes for the “standard offer,” or the price at which the state pays per kilowatt-hour for power generation.⁸¹

As Mainers’ dissatisfaction with our current power companies rises, along with electricity prices, lawmakers and citizens are faced with starkly different competing visions on how to secure a more affordable and sustainable energy future.

Analysis

Over the past several legislative sessions, some legislators and their supporters in the public have pushed to establish a quasi-public entity to seize the assets of the two companies which, while not generating power, get electricity to homes and businesses in the state: Central Maine Power (CMP) and Versant. These companies run the transmission and distribution (T&D) of electricity across the state in their respective territories. The proposed entity would be run by a board, some of whom are publicly-elected, and some of whom are chosen by those elected.⁸²

Proponents succeeded in passing LD 1708 through the Maine Legislature in 2022, but it was vetoed by Governor Janet Mills. Our Power Maine, the effort behind the idea, has qualified to place the proposal on the statewide ballot in November 2023.⁸³

Proponents argue that a “consumer-owned” utility (COU) like Our Power’s proposed Pine Tree Power Company (PTPC) would perform better than “investor-owned” utilities (IOU) like Central Maine Power and Versant. They point to valid billing and customer service issues with CMP as evidence for their cause without showing how their idea would be financially feasible. What would a statewide quasi-public T&D company truly look like?

As testimony on LD 1708 from Worthington Sawtelle, LLC of York stated, proponents have grossly overstated the benefits of the PTPC business model in terms of cost-savings, reliability, and capacity for decarbonization.⁸⁴ Proponents’ case is undercut by the simple logic of economic incentives. Simply, the drive to profit in a marketplace cultivates the sorts of benefits that the sponsors of this bill seek. Public management has shown to be generally more expensive and less reliable across myriad industries throughout history than private direction.

LD 1708 required Pine Tree Power’s board of governors to contract management of its acquired facilities to an operator or operations team familiar with running the facility. Mills mentioned this provision when she vetoed the bill, stating it made it likely Pine Tree Power would contract with CMP and Versant to run the same facilities they had been forced to sell, potentially making the process of acquisition even more costly.

Whereas IOUs may balance risks and costs between their shareholders and ratepayers, COUs only have ratepayers on whom to collect revenue and balance their books. Pointing to a COU’s ability to manage its assets as a form of income recognizes that this is a service best performed by private wealth managers, who have a proven track record in this arena. There is much less reason to be confident that a publicly-elected board would manage T&D any better than CMP or Versant.

Nothing in Maine law prohibits a truly independent nonprofit corporation from raising, investing, and leveraging funds to negotiate with Central Maine Power and Versant to purchase

transmission lines, given approval from the PUC. Such an endeavor, if beneficial, should not need state-backed eminent domain power to force its way into the market.

Even if the management of the Pine Tree Power Company could easily replace existing T&D companies, there is no guarantee that ratepayers would not be saddled with the costs of acquisition after all. Estimates suggest that the new PTPC would take on more than \$13 billion onto its balance sheet after seizing CMP and Versant, on top of legal fees from the all-but-assured court battle to ensue.⁸⁵ With these extra costs, it is unlikely that the publicly-elected board will be nimble enough to administer the bold renovations and updates that the proponents envision in any reasonable time period.

Some proponents say that Maine should look to Nebraska, in which a public-owned entity runs T&D for every resident in the state.⁸⁶ While also a sparsely-populated state, Nebraska is a better example of what to avoid, rather than emulate.

Nearly 90% of Maine is forest, the most of any state in the union. Nebraska is the least-forest state, and forest cover matters considerably for delivering electricity. Concentric Energy Advisors, on behalf of CMP, testified to the Legislature that downed trees or fallen limbs are responsible for 87% of the outage time experienced by their customers and more than 80% of tree-related outages are due to trees growing outside of their rights-of-way “where the utility is not allowed to trim or remove trees.”

As readers will find later in this section, Maine uses renewable portfolio standards (RPS) and is a member of the Regional Greenhouse Gas Initiative (RGGI) carbon cap & trade system; both of which contribute to higher consumer prices. According to an analysis by the American Legislative Exchange Council, of the states which do not use RPS and are not in RGGI, residents of Nebraska pay the most for electricity.

Mainers need a more competitive market for energy, not less. An immense transfer of assets to a quasi-public corporation, whose leadership is under no obligation to understand or embody the economics or science of reliable energy transmission, presents a crisis of accountability.

Despite the best intentions of sponsors, this proposal would not solve the lack of reliability and transparency of which consumers often decry.⁸⁷ It would likely make those aspects worse. Voters will be asked to decide on this enormously complex policy question.

Recommendations

- Reject attempts to seize private power company assets and replace them with a publicly-elected board.
- Require long-term assessments of costs and consumer prices before public seizure.

Repealing the Renewable Portfolio Standard



The Problem

Rising electricity costs threaten the survival of many of Maine's manufacturing and industrial businesses and burden thousands of Maine families. Unfortunately, policymakers have pursued a misguided approach—the Renewable Portfolio Standard—which increases the price of electricity, reduces private-sector employment, and does little to mitigate carbon emissions.

Analysis

First implemented in 1999 under Governor Angus King, Maine's Renewable Portfolio Standard (RPS) law required that 30% of total retail electric sales in the state come from renewable sources within a decade.

The law itself did little to alter the state's mix of fuel sources used for electricity production. Maine was already producing large quantities of energy from renewable sources. Maine's numerous lakes and streams enabled the production of economically viable hydroelectric power, and its forestry industry supplied wood waste for biomass electricity production.⁸⁸

In June 2006, then-Governor Baldacci signed legislation to counter the perception that the RPS law lacked environmental benefits. The updated law kept in place the overall 30% renewable requirement but compelled electricity providers to also adopt new sources of renewable energy by 1% annually beginning in 2008 and ending in 2017 when 10% of the electricity sector's fuel mix will consist of new renewable energy sources.

An analysis of the economic effects of these RPS mandates in 2012 by the Beacon Hill Institute—using data from the U.S. Energy Information Administration—estimated that RPS will raise the cost of electricity by \$83 million for the state’s residential consumers by 2020 by raising electricity prices 1.24 cents per kilowatt-hour (kWh) in the medium-risk scenario.⁸⁹ In reality, the average monthly retail electricity price in Maine grew from 11.8 cents/kWh in 2012 to 13.5 cents/kWh in 2020, a rise of more than 1.7 cents, greater than the worst-case scenario in the Beacon Hill Institute report.⁹⁰

Increased energy prices hurt Maine households and businesses and, in turn, inflict significant harm on the state economy.⁹¹ In the face of rising electricity prices, several states have recently taken action to repeal or reform their RPS requirements. In 2015, West Virginia ended its RPS program entirely, while Kansas amended its regulations to create voluntary—rather than mandatory—renewable energy targets. In 2014, Ohio temporarily froze its RPS for two years.

In 2019, Maine moved in the wrong direction by updating its RPS requirements to outline that 80% of energy will come from renewable sources by 2030 and 100% by 2050.⁹² With Maine’s electricity rates remaining among the highest in the country, it’s time to repeal our RPS and pursue free-market solutions to our energy challenges.

Recommendation

- Repeal Maine’s Renewable Portfolio Energy Standard.

Removing the 100-Megawatt Cap on Clean Energy



The Problem

In an effort to prop up the uncompetitive wind and solar energy industries, and protect small in-state hydropower producers, the state imposed a 100-megawatt cap on the amount of hydropower energy that generators may be credited under Maine's renewable energy regulations. This arbitrary limitation on a clean and inexpensive energy source has unnecessarily stifled market forces and contributed to higher electricity costs for Maine's residents and businesses.

Analysis

Under Governors King and Baldacci, legislators enacted the Renewable Portfolio Standard (RPS), which promotes renewable electricity generation by mandating that a certain percentage of a retail electricity provider's load be derived from renewable sources. The RPS regulations limit the amount of energy available from renewable sources—such as hydropower, tidal, biomass, and geothermal—to 100 megawatts per facility per year.

However, in 2009, legislators lifted the cap for wind power, which is expensive to generate and provides unreliable output compared to other renewable sources. In 2019, lawmakers also lifted the cap on solar power.⁹³ Meanwhile, reliable, base-load sources of clean energy like hydropower remain capped.

This arbitrary 100-megawatt cap on hydroelectric power alone gives wind and solar an unfair advantage and prevents Maine from harnessing large-scale hydropower to provide affordable and renewable energy. This restriction ultimately drives up the cost of electricity. Estimates suggest the strict RPS regulations increase prices for the average residential consumer by about \$73 per year;

industrial users like paper mills face much higher burdens.⁹⁴

Other New England states—including Rhode Island, Vermont, and Connecticut—have recognized the importance of hydropower in meeting their environmental and economic objectives. As these states have explored innovative ways to reduce their energy costs and enhance the stability of their energy grids, Maine’s unnecessary restrictions have held us back.

In 2015, the Office of the Public Advocate testified that removing the 100-megawatt cap on hydropower is “virtually certain to lower electricity costs for Maine ratepayers.”⁹⁵ Hydropower is clean, abundant, and has the possibility of significantly reducing electricity costs to consumers and businesses. Policymakers must reduce needless regulations that stand in its way.

Recommendation

- Remove the 100-megawatt capacity limit on all forms of renewable energy generation like hydroelectric power.

Exiting the Regional Greenhouse Gas Initiative



The Problem

The Regional Greenhouse Gas Initiative (RGGI), of which Maine is a member, is an ineffective effort to combat climate change that has cost Maine jobs and raised electricity rates for all consumers—particularly businesses in our struggling manufacturing industry. Policymakers have also failed to allocate sufficient funds generated from the program to Maine’s most urgent energy priority: reducing electricity rates.

Analysis

RGGI is a mandatory cap-and-trade program designed to reduce greenhouse gas emissions in northeast and mid-Atlantic states. The initiative currently involves 11 states—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia. Pennsylvania is expected to join as the twelfth in 2023.⁹⁶

The RGGI cap-and-trade system applies to carbon dioxide (CO₂) emissions from electric power plants with capacities to generate 25 megawatts or more.⁹⁷ The RGGI emissions cap took effect January 1, 2009, based on an agreement signed in 2005.

In 2014, a study by Maine Policy Institute—using economic modeling developed by the Beacon Hill Institute—estimated that Maine’s exit from the RGGI program would have saved electricity consumers as much as \$132 million from 2015 to 2020, created about 300 private-sector jobs, and boosted investment by \$5-6 million.⁹⁸ According to former Governor Paul LePage’s Energy Office, RGGI caused the average Central Maine Power ratepayer’s bill in 2014 to increase by 0.24 cents per kilowatt hour, creating

exceptionally high burdens for energy-intensive manufacturing businesses.⁹⁹

Regardless of the gravity of climate change or the role power plants play in exacerbating its effects, there is little evidence that RGGI is an effective response.

In 2019, the nonpartisan Congressional Research Service acknowledged that “from a practical standpoint, the RGGI program’s contribution to directly reducing the global accumulation of [greenhouse gas] emissions in the atmosphere is arguably negligible.”¹⁰⁰

Through the sale of “emissions allowances” to power plants, Maine generated \$11.5 million in 2020, jumping to more than \$20 million in 2021, to nearly \$27 million in 2022.¹⁰¹ Currently, Maine uses its revenues from RGGI to fund Efficiency Maine Trust’s heating programs, business energy programs, and direct electric rate reduction for businesses. Instead, policymakers should send these fees straight back to ratepayers in the form of direct bill assistance, as New Hampshire does.¹⁰²

At a time when energy costs are threatening many of Maine’s largest employers, lawmakers should focus on returning RGGI funds to businesses, allowing them to determine the best way to grow their business, invest in energy projects, or hire more workers.

Recommendations

- Exit RGGI.
- Use all RGGI auction proceeds to provide direct electric rate relief.

Eliminating Maine's Expedited Wind Energy Law

The Problem

Maine's expedited wind law, signed in 2008 by then-Governor Baldacci, created a special permitting and zoning process for wind energy projects. Under the law, large portions of the state were designated as "expedited permitting areas" for grid-scale wind energy development. Passed with little debate or scrutiny, Maine's expedited wind energy law has increased electricity rates through market distortion, curtailed citizens' rights, and damaged some of Maine's most scenic landscapes.

Analysis

Under Maine's expedited wind energy law, applications are fast-tracked in designated expedited permitting areas with little input from local residents, and the Maine Land Use Planning Commission is given broad authority to add land in unorganized territory to the expedited permitting area.¹⁰³ The law also laid out an aggressive goal of having 2,000 megawatts of installed wind capacity by 2015, an unrealistic objective that wasn't achieved.

The expedited wind law ignores important ecological impacts that turbines have on the environment. It fails to take into consideration migratory bird paths, resulting in numerous birds colliding with turbines. Joel Merriman, director of the American Bird Conservancy's Bird-Smart Wind Energy Campaign estimates that wind turbines kill 1.17 million birds in the US every year.¹⁰⁴ Maine is directly in the migratory flight path for millions of birds representing hundreds of species that fly north every year to Canada's boreal forest.

In addition, wind development requires that thousands of trees be cut down, reducing our carbon capture capability, and that ridge

tops be leveled with explosives, which can disturb nearby wildlife habitats.

The expedited wind law also fails to require detailed decommissioning plans from wind developers prior to project approval. As a result, companies can construct turbines without the financial resources to responsibly dismantle them and restore the landscape when the project is no longer viable.

It should also be noted that Maine benefits little from wind energy development in the state. Much of the electrical power generated by wind installations in Maine is sold to states in southern New England whose residents have resisted wind energy development. In the end, Maine's aggressive push to promote wind energy is benefitting Connecticut and Massachusetts more than Maine ratepayers.

Wind energy developers should have the same opportunity to compete in Maine's marketplace as any other energy source, but the expedited wind law gives them a distinct advantage over other, cheaper forms of renewable energy like hydropower. Lawmakers should repeal or extensively amend the expedited wind law to restore a more level playing field in the energy sector.

Recommendations

- Repeal the Expedited Wind Law at Title 35-A, chapter 34.
- Incorporate decommission planning and funding into wind energy regulations.
- Tighten scenic impact requirements to ensure that wind projects fit harmoniously with their environment.

Resisting Efforts to Join the Transportation & Climate Initiative



The Problem

Similar to the Regional Greenhouse Gas Initiative, the Transportation & Climate Initiative (TCI) is a regional coalition of 12 states and Washington D.C. that seeks to reduce carbon emissions within the transportation sector. The TCI would price carbon emissions and place an artificial cap on how much of it can be produced from transportation-related sources within the region.¹⁰⁵ As the program advances, the cap of allowable transportation-related emissions would be reduced and the tax would be increased until, eventually, the region does not emit carbon from transportation-related sources. If adopted, the TCI would result in a substantial increase to the largely regressive tax on gasoline and diesel fuel, hurting Maine's most vulnerable citizens.

Analysis

The TCI is a cap-and-trade style program that proposes to establish an artificial cap on transportation-related carbon emissions across the region. Each participating jurisdiction would receive an emissions budget that is based on its "apportionment of the regional cap for each year of the TCI Program."¹⁰⁶ The regional cap would decline annually, reducing the amount of carbon released into the environment.

To ensure transportation-related emissions are declining, gasoline and on-road diesel fuel suppliers will be required to purchase allowances or permits at auction for the carbon emitted by their fuel products. They would also be required to report emissions to the jurisdictions participating in the program, affecting all fuel suppliers that operate within or deliver to the TCI region. The cost of the allowances paid by suppliers would be passed onto

consumers at the pump, effectively creating a new tax on gasoline and diesel fuel. These costs would also increase annually, coercing divestment in gas-powered vehicles.

As part of the TCI agreement, revenues generated by the system would be used by states exclusively to expand clean energy infrastructure within the transportation sector, including replacing gas-powered public transit with electric alternatives and building new electric vehicle charging stations.

Despite the general state of disrepair of Maine’s roads and bridges, TCI revenues could not be used to plug the state’s transportation funding shortfall. That shortfall was estimated by a Blue Ribbon commission report in December 2019 to be \$232 million per year, which also assumed the state would bond \$100 million per year for transportation.¹⁰⁷

David Stevenson, the director of the Center for Energy and Environmental Policy at the Caesar Rodney Institute, estimates that, at 17 cents per gallon, the new gas tax contained within the TCI would cost \$225 per family per year, generate \$56 billion in revenue between 2022 and 2032, and save approximately 16 million tons of carbon dioxide emissions per year at a cost per ton savings of \$3,500. In terms of climate impact, the TCI would lead to a reduction of global temperatures by about one one-thousandth of a degree by 2100; a costly endeavor for such meager results.¹⁰⁸

In December 2019, after the TCI released its draft Memorandum of Understanding (MOU), New Hampshire Governor Chris Sununu rejected the plan, calling it a “financial boondoggle,” and stating he will not force Granite Staters to pay more for gasoline.¹⁰⁹ Soon after, governors and lawmakers in other northeastern states also voiced their skepticism.¹¹⁰ In January 2020, Maine Governor Janet Mills said that she “does not agree that states, as a group, should impose a fee on gross production of gas or any other fuel product, just to have it passed onto the retailer and the consumer,” rightly noting that it would not be fair to Mainers. Then, the administration was just “monitoring” the TCI.¹¹¹ Maine is currently not in this agreement as Gov. Mills did not sign the MOU by the deadline date

in December 2020. Since gas prices reached historic highs over 2022, the TCI seems to be in hibernation.¹¹²

According to the United States Energy Information Administration, Maine ranks 12th highest in the country for per capita gasoline expenditures, \$955 on average.¹¹³ Additionally, the U.S. Census Bureau 2018 American Community Survey found that more than 77% of Mainers in the state's two biggest metro areas (Portland-South Portland and Lewiston-Auburn) commute to work alone by car, truck or van (between 8% and 14% carpool) with an average travel time between 24 and 25 minutes.¹¹⁴ By implementing the TCI, state politicians would undoubtedly increase this burden, the brunt of which would be borne by low-income Mainers.

While well-intentioned, artificially increasing the cost of gasoline and diesel fuel to achieve a reduction of one one-thousandth of a degree in global temperatures 80 years from now is not worth the substantially increased financial burden on Maine residents, particularly low-income Mainers. Elected officials in Maine should resist current and future efforts to enter our state into the TCI agreement.

Recommendation

- Prohibit the executive branch from entering interstate compacts without legislative approval.

Exploring the Development of Nuclear Power



The Problem

Maine lawmakers have identified climate change as a necessary problem to tackle, and in response have sought to shift the state's energy portfolio to include more "clean" sources of energy such as wind and solar. However, the state's energy production has grown ever more expensive over the last two decades, leaving consumers and businesses desperate for relief. In 2023 alone, costs to CMP residential customers are expected to rise by roughly 26%.¹¹⁵

While there is some acknowledgment in Augusta of growing energy expenses, the governor and lawmakers have done very little beyond attempting to alleviate short-term financial stress by providing temporary relief in the way of rebate checks to Maine residents.¹¹⁶

If Maine is going to truly pursue clean energy alternatives to fossil fuels, it needs to consider trying to cultivate nuclear power in Maine once again.

Analysis

In 1972, the Maine Yankee Nuclear Power Plant, featuring a 900-megawatt reactor, began operations. During the lifespan of the plant, which was shut down in 1996, Maine Yankee provided roughly 119 billion kilowatt-hours of electricity, which supplied most of the state's required energy.¹¹⁷ Since the closure of the reactor, Maine has transitioned toward alternative sources of electricity to fill the gap left by Maine Yankee's absence. These new sources include both heavily subsidized, expensive renewable options, as well as fossil fuel generation. The state's largest power plant today is natural gas-fired.¹¹⁸

The result has been dirtier and more expensive electricity generation for the last quarter-century. State lawmakers have been consistently searching for new, particularly renewable energy sources, leading to the increasing focus on wind and solar farms. These alternatives, however, are not only expensive for the consumer, but they are also expensive for the government as significant financial commitments are necessary to build and support the operation of these options.

Yet as the state continues to search for clean energy alternatives to fossil fuels—a problem which will only grow worse with the nation’s move toward electrification—there has been no serious attempt to deal with the ever-increasing cost of electricity, which has grown significantly in recent years and will only continue to skyrocket. High energy prices are not only a problem for residential consumers, but they also severely limit the state’s ability to attract and grow businesses that consume a great deal of energy. Prices being higher by only a couple of cents will mean hundreds of thousands, if not millions of dollars in additional expenses for a business.

It is often claimed that our expensive electricity is a result of Maine’s cold climate, but this is not at all the case. The average cost of electricity for Maine residential consumers in October of 2022 was 23.06 cents per kilowatt-hour, while residents of other northern, cold-weather states such as Wisconsin (16.19 cents) Minnesota (14.95 cents) and North Dakota (11.73 cents) enjoy far cheaper electricity.¹¹⁹

The reason Maine has such high energy costs is primarily a supply issue. Maine currently generates less electricity than all but five other states, increasing pressure on prices.¹²⁰ Making matters worse, the energy we do produce is of a particularly expensive and volatile type due to the deliberate choices Maine has made to emphasize expensive and unreliable renewable energy sources.

If the state is going to continue to press for clean energy solutions, it needs to do so in a way that also addresses the increasing cost of

electricity. This means that it is time for the state to consider investing in nuclear power once again.

The opposition to nuclear power is largely emotionally-based and irrational. Despite the sensationalist fear-mongering about the technology, nuclear power has proven to be not just safe, but considerably safer (by a wide margin) than all other energy-producing options.¹²¹ Even in well-known nuclear incidents, the resulting casualties are extremely low. In the Fukushima nuclear disaster, for instance, the Japanese government reports only a single person's death directly attributable to the accident.¹²²

Modern nuclear technology is also considerably safer and more efficient than the nuclear technology of the past. Today, the promise of the up-and-coming technology of small modular reactors (SMR) offers a design that will speed construction, lower cost, and improve safety over traditional nuclear reactors.¹²³ SMRs are classified as having capacity between 50 MW and 300 MW, about one-third that of traditional reactors.¹²⁴

Given that Maine uses about 970,000 megawatt-hours (MWh) of electricity in a typical month, between five and 20 SMRs could power the whole state.¹²⁵

Beyond the technology's safety, nuclear power continues to be remarkably inexpensive. In 2019, the United States Energy Information Administration (EIA) estimated that the cost of electricity from new, advanced nuclear power plants coming online in 2023 to be 7.75 cents per kilowatt-hour before government subsidies.¹²⁶ Current energy generation in Maine is three times that cost.

Finally, there is the issue of environmental impact. While many people believe we should pursue an "all of the above" strategy, the truth is that options like wind and solar are responsible for a significant amount of environmental degradation, not only in their production (elements and materials necessary for them to be built and maintained) but also in their deployment. For instance, the

wind farm that was built on top of Mars Hill necessitated a radical alteration to the landscape, including building roads, clearing trees and using dynamite to reshape the area in preparation for the windmills.

Solar panels, too, are a major problem. Solar panels require roughly 17 times more in the way of materials—glass, concrete, cement, steel—to create the same amount of electricity when compared to nuclear power plants. In addition, solar needs 450 times more land to produce the same amount of power as a nuclear plant.¹²⁷ Nuclear power is extremely energy dense, enabling the production of a large amount of electricity in a very small area. Thus, by prioritizing other types of clean energy over nuclear power, we are in reality doing additional, unnecessary environmental harm.

The roadblock to the creation of new nuclear power plants, in Maine and across the country, is one primarily of psychology. The public is wary of nuclear power due to a prolonged, dishonest political campaign against it, engineered by environmental activists who do not understand the technology. These groups pushed state and Federal governments to adopt new, largely meaningless “safety” regulations that resulted in radical cost inflation for the building and operation of nuclear power plants. In the aftermath of these new regulations, costs to build and maintain reactors became two to three times more expensive.¹²⁸

What Maine needs now are leaders who are willing to advocate for nuclear power, and search for ways to make the production of nuclear power cheaper, and more likely to occur. Lawmakers at both the state and the Federal level need to reform regulations that have strangled the industry, and made the production of new plants unfeasible.

Recommendations

- Amend the definition of “renewable resource” to include nuclear energy.
- Reform utility regulations to make siting and planning of nuclear power plants more affordable and feasible.
- Commit state policy to attracting construction of one SMR every two years over the next 10 years.

Balancing Executive Authority in Times of Emergency



The Problem

Maine is now on the other side of an unprecedented public health crisis, in response to which the governor rationalized a 15-month-long, continuous Civil State of Emergency. Decades ago, the Maine Legislature granted the governor near-unchecked executive authority in times of emergency. Governor Janet Mills used those broad powers to govern under single-person rule from March 2020 to July 2021 with very little input or participation from Mainer’s elected representatives.

No single human being should ever be able to grant themselves expanded powers for as long as they wish. A governor should have the power to respond effectively to an imminent threat or crisis, but there must be clear limits and oversight on that authority in order to maintain constitutional balance.

Analysis

Governor Mills exercised her power in truly remarkable ways during the Civil State of Emergency in response to the COVID-19 pandemic. Mainer’s were ordered to stay home, businesses were ordered to close, entire sectors of the economy were arbitrarily designated as “essential” while others were deemed “non-essential,” patients were forced to delay or cancel so-called “elective procedures,” quarantines and travel restrictions were enforced, and schools were closed necessitating an experiment in distance learning for Maine students.

These actions had a drastic impact on the state’s economy. Despite this, the Maine Legislature was offered little-to-no involvement as Mills governed for months behind closed doors and by unilateral executive orders. Even after she allowed the Civil State of

Emergency to lapse on June 30, 2021, emergency rulemaking continued through a Public Health Emergency, declared by the state Department of Health and Human Services (DHHS), on July 1. This enabled Maine CDC to force healthcare facilities to fire dedicated employees for refusing to take part in investigational COVID-19 vaccination, despite their individual risk profile, religious objections, or even verified medical exemptions. Many months later, peer-reviewed scientific publications have validated that refusal, as the COVID-19 vaccines have failed to significantly limit infection or transmission of the virus.

The governor's authority to manage the state in emergencies is granted in Maine statute under Title 37-B, Chapter 13 which deals with the Maine Emergency Management Agency.¹²⁹ This law grants the governor the power to declare several types of emergencies, yet curiously the section dealing with "energy emergency" proclamations requires that if an order or rule issued by the governor is in effect for longer than 90 days, the Governor shall be required to call the Legislature into session, while the section on civil emergencies does not.¹³⁰ As such, given that she declared a state of civil emergency during the coronavirus pandemic, no time limits or oversight of the Legislature was mandated.

Beyond this, Maine's governor is among the most powerful in the country during emergency situations as she may alter or suspend statutes or regulations. Interestingly, eight states, including Vermont and Massachusetts, provide no authority to the governor to change either statutes or regulations during an emergency.¹³¹

Very few dispute that a governor should be able to respond quickly to an evolving threat, and the early days of the COVID-19 pandemic panic certainly qualified. However, it is unwise and unnecessary to grant such absolute power to the state's chief executive. After a certain amount of time, ideally within two weeks, the people's branch should counterbalance that authority.

Not only should legislative approval be required to continue an emergency beyond the initial period, legislators should also be able

to amend or rescind specific emergency orders by joint resolution. This would naturally amount to a two-thirds legislative threshold as the governor would presumably veto such a proposal.

Additionally, Mainers should be able to challenge emergency orders which infringe on constitutional rights under the “strict scrutiny” standard, whereby the state must prove that it is fulfilling a compelling interest with the least restrictive means possible, and courts should guarantee that these challenges are heard as soon as possible.

Recommendations

- Require majority vote of the legislature to continue a state of emergency beyond 14 days, and for every 14-day extension thereafter.
- Only the governor may declare a state of emergency and issue emergency orders. No agency may enter emergency rulemaking without an emergency declaration from the governor.
- Allow for a legislative joint resolution to rescind or amend, in whole or in part, any emergency order issued by the governor.
- The governor cannot issue an emergency declaration for a similar circumstance to those which have expired or been terminated.
- Require emergency orders to be narrowly tailored, and that challenges to them must receive expedited judicial review.
- Require that declared disaster areas be the smallest political subdivision of the state possible to properly respond to the emergency.

Continuing to Reform Welfare

The Problem

Government in Maine has historically attempted to solve problems like poverty, food insecurity, and job loss with extremely generous social welfare programs. Legislative intentions may have been noble in the creation and structure of these programs, but it is evident that Maine's welfare programs have promoted government dependency instead of giving struggling families the help they need to become financially independent.

For eight years, between 2011 and 2019, Maine made serious attempts to reform the system so that it provided needed relief, while also encouraging self-sufficiency and upward mobility. This change had a tremendous impact on the state and its people, helping get more people back to work, and resulting in fewer people being dependent on the state.

Since the Mills administration has taken over in Augusta, however, it has been aggressively turning back the clock on Maine's welfare programs, returning to the failed approach of the past. Now there is a massive expansion of welfare, due to the massive economic devastation resulting from the government's response to the COVID-19 pandemic. This has made it all the more difficult to get Mainers working again.

Analysis

A proper understanding of the issue of welfare needs to begin with an understanding of human psychology, and why perpetual, expansive, and overly generous welfare programs ultimately trap into dependency the very people they try to help.

The federal government, seeking to respond to the unprecedented financial crisis resulting from government-mandated economic

shutdowns, expanded unemployment benefits by \$600 per week above the typical payments made to those on unemployment. The result was more money in the pockets of beneficiaries, however the additional payments made it more financially lucrative for many Americans to receive unemployment than it would have been for them to return to work.¹³²

This phenomenon caused many employers in Maine to have a difficult time rehiring workers once the economy began to reopen. This, in turn, led to a slower economic recovery, lower revenues into the state treasury, and more persistent unemployment. While revenues have since bounced back, the labor force has barely recovered to its pre-pandemic levels.

In contrast, tightening welfare eligibility standards preserves resources for those truly in need while discouraging welfare dependence, particularly among those with higher incomes. In the Temporary Assistance for Needy Families (TANF) program, an applicant family comprised of a single parent caring for two children can earn up to \$1,598 per month¹³³ and still receive welfare benefits. Only 11 states have such lax eligibility criteria.

In Maine, the income limit to receive subsidized child care services is 322% of the federal poverty level, or \$84,076 for a family of four.¹³⁴ According to 2016 data, the average income threshold among similar rural states was 185% of the poverty line, or \$45,670 for a family of four.

Policymakers should also emphasize the importance of diversion programs to avoid long-term welfare enrollment. For those eligible to enroll in Maine's welfare system, the first step should not be the near-automatic enrollment that is the case today.

Diversion programs are intended to deter welfare applicants from entering the system in the first place by providing lump sum payments to the needy as a way of assisting them with short-term financial problems—such as costly car repairs—that do not require full enrollment in the welfare system.

Maine's Alternative Aid program could be described as a diversion program, but its design is flawed. Those who qualify can get the equivalent of three months of TANF cash assistance each and every year without any work requirements and without jeopardizing any other benefit such as food stamps.

Maine's Alternative Aid program stands in stark contrast to Georgia's diversion strategy. In DeKalb County, Georgia, for instance, "applicants are required to attend an orientation, develop a TANF Family Service Plan based on a comprehensive assessment and, for those deemed ready for work, complete an up-front job search period as a condition of program eligibility."¹³⁵

The program's intake meeting explores the applicant's job skills, work interests, educational attainment, and personal and family challenges. Applicants considered work-ready "participate in a four-week structured job search program for 40 hours per week," which includes "a series of workshops and group job search sessions to prepare for employment," as well as time spent "contacting employers, completing resumes, and participating in job interviews."

Georgia's diversion program is remarkably successful. Out of every 100 TANF applicants, "25 to 50% complete the program and receive TANF," with the remainder either finding employment or dropping out of the application process.

Policymakers should also strengthen job search and work requirements, which have consistently been shown to boost long-term earnings of welfare recipients, shorten the amount of time spent on the rolls, and reduce the number of people dependent upon the government. In March 2016, Bethany Hamm, director of the Office for Family Independence in DHHS, testified before the Legislature that the TANF program contains an "overly broad exemption that has allowed TANF recipients to avoid required work too easily."¹³⁶

Recommendations

- Focus Maine's limited welfare resources on Maine citizens and those who are most in need.
- Emphasize diversionary strategies to help those in need without promoting long-term dependency.
- Enforce work participation requirements and eliminate loopholes that promote non-compliance.
- Apply time limits to the General Assistance program.
- Reform Maine's General Assistance state funding formula.
- Reduce time limits in the TANF program from 60 months to 24 months.

Passing Meaningful Legislative Reforms



The Problem

The Legislative process is opaque and difficult to understand or be properly navigated by the citizens of Maine. Worse, there are many tricks politicians and political parties use to manipulate the Joint Rules and the committee process in order to push their agendas through the legislature with minimal public input.

In addition, anyone who observes—or experiences—the final days of a legislative session understands the dysfunction of Maine’s current lawmaking process. Votes are called at a dizzying pace, committees rush through the review process, and many legislators struggle to keep up. Each year, many frivolous or duplicative bills are submitted, which takes time away from more important proposals.

Analysis

Each year, several measures are introduced in the Maine Legislature as “concept drafts,” which are permitted under Joint Rule 208.¹³⁷ Concept drafts are bills or resolves that consist only of a bill title and summary. Concept drafts may only be submitted by legislators, as the Joint Rule prohibits the Governor and state entities from submitting legislation in this manner.

At the public hearing for bills submitted as concept drafts, the sponsor often releases the language of the bill for the first time and testifies in its favor; rarely is this language made available to Maine people prior to the public hearing. This prevents Maine citizens from understanding the details and consequences of the proposed legislation before a public hearing is held, which is the only period within the legislative process where the public may provide input on a proposed bill.

For contentious policy proposals, concept drafts are frequently used by politicians and political parties to advance an agenda without exposing the contents of a bill to their opponents. For instance, in the 128th Legislature, LD 837, a concept draft titled “An Act To Provide Supplemental Appropriations and Allocations for the Operations of State Government,” was used to redirect funding from the Fund for a Healthy Maine to partially implement Medicaid expansion.

A number of concept drafts are also introduced in the Second Session of the Legislature despite legislation in this session being constitutionally restricted to emergency matters. If a bill is merely a concept draft upon submission to the Legislative Council, it is highly unlikely its contents rise to the emergency threshold outlined in the Maine Constitution. More often than not, these bills are used by legislators as placeholders for their personal, unfinished priorities carried over from the first session.

Although not always done intentionally, lawmakers can make changes to a bill during the legislative process that limits public understanding of the bill’s contents and impact. During the committee process, legislators can adopt an amendment to a bill that strikes the full text of the measure and offers an entirely new proposal, sometimes with language that conflicts with the original intent of the bill. Despite the public only having the opportunity to weigh in on the original language, the committee may move forward into work sessions with new language that has not been vetted by the public. The public should have the opportunity to weigh in on drastically modified legislation.

Further, Maine imposes no restrictions on the number of bills a legislator may introduce during the First Regular Session of the Legislature. During the Second Regular Session, bills may only be submitted by the Governor, and legislative proposals may only be introduced if approved by the Legislative Council, a bipartisan group of 10 legislative leaders. As a result, some lawmakers submit dozens of bills without taking the time to carefully consider their repercussions or political viability. In the 129th Legislature, more

than 2,130 bills were introduced by 186 legislators, an average of more than 11 bills per legislator.

The costs of introducing and debating legislation are not trivial. While it is difficult—given the broad diversity of bills introduced—to calculate the cost involved, a study conducted in Wyoming in 2011 found that it cost between \$450 and \$40,000 to propose, draft, and adopt a single piece of legislation.

The price included the cost of paper printing, administrative time, and the hours lawmakers spent reviewing and debating the legislation. Numerous analysts and budget experts work in Augusta to help lawmakers craft legislation and make an informed decision when voting. In addition to legal and policy specialists working in the Revisor’s Office and the Office of Policy and Legal Analysis, drafts of bills often require a fiscal note, provided by the Office of Fiscal and Program Review. Combined, these agencies employ at least 40 people.

On top of these quantifiable costs, the need to spend time studying superfluous legislation can distract lawmakers from more important bills that deserve careful analysis. Under the current system, when a bill is submitted by a lawmaker, the Revisor’s Office is tasked with researching relevant state and federal laws and regulations, investigating how similar programs operate in other states, accounting for myriad tax policy repercussions, and writing a coherent legal framework to implement the program. Yet, despite all that work, the proposal may have no politically feasible path to enactment.

To reduce the amount of money spent on superfluous proposals and to allow more time for substantive legislation, a per-legislator cap on the number of bills submitted should be imposed. Many states, including Colorado, California, and Florida have adopted similar rules. Given the complexity of many state programs and laws, most legislators lack the time to carefully study all proposed legislation. Limits on the number of bills introduced would help to

simplify the legislative process, force lawmakers to prioritize their legislative goals, and reduce costs for staff, printing, and paper.

Recommendations

- Implement a Joint Rule or enact a law that requires legislative committees to hold another public hearing if an amendment is accepted to a bill that strikes all existing language.
- Require two public hearings for concept drafts.
- Disallow concept drafts in the Second Session.
- Prohibit concept drafts entirely.
- Cap the number of bills that may be introduced during the First Regular Session of the Legislature to five bills per legislator, except for constituent bills.

Streamlining Maine's Budget Process



The Problem

Every two years, Maine's budget is proposed by the governor, debated by the Legislature, and ultimately passed. However, due to the manner in which the system is set up, the process by which it is passed has been corrupted by special interests and powerful legislators. It is now quite common to see budget work completely ignored for months, while the Legislature waits until the last minute to begin serious work, and then closed-door meetings and quick, poor decision making end up creating flawed, bloated budgets. Maine needs to reform its budget process to improve transparency and to ensure that every elected official has input in the final agreement.

Analysis

Despite Maine's governor being required to submit a budget proposal in January of a budget year, several legislatures have struggled to debate and negotiate a biennial budget in a timely fashion. The budget-making process is one that should incorporate the full legislature and the expertise of all members of government; a budget should not be settled upon exclusively by legislative leaders nor the executive branch.

A flurry of recommendations to improve Maine's budgeting process were put forward by Maine Policy Review in 1993, however few of those considerations were put into law.¹³⁸ In addition, the Special Commission on Governmental Restructuring was established in 1991 to maximize citizen participation in public policy making and restructure state government in such a way that efficiencies and cost savings are assured.

The commission put forth several strategies to improve Maine's budget process, including strict limits on expenditures and clear

identification of all expenditures for state programs, federally-funded programs to which the state contributes, and tax exemptions. The commission also recommended that the number of boards and commissions be reduced wherever possible. Despite these recommendations, Maine continues to have one of the most opaque and complex state budgeting processes.

In 2016, the U.S. Public Interest Reporting Group conducted its seventh “Following the Money” report that studies state government spending transparency websites. The study grades individual states based on transparency standards that include the user-friendliness of web portals, the ability for one-stop searching of all government expenditures, and the degree of ease with which the public may search for and download content.

The report rated Maine’s “Maine Open Checkbook” website in the bottom 10 of all states, or 41st overall, in providing online access to government spending data. Maine received a “C” grade for having “comprehensive and easy-to-access checkbook-level spending information but limited information on subsidies or other ‘off-budget’ expenditures.”¹³⁹

In light of these shortcomings, Maine should take action to increase legislative participation in the budget process and inject transparency into the Maine Open Checkbook website, ensuring Mainers can easily account for all the money spent by their state government.

Recommendations

- Expand Maine Open Checkbook to provide detailed spending and subsidy data from all entities of state government.
- Enforce a competing budget deadline of February 28 in a budget year.
- End government shutdowns by implementing automatic cuts in the budget when an agreement cannot be reached by the start of a new fiscal year.

Abolishing Unnecessary Boards & Commissions



The Problem

Boards and commissions can serve a variety of purposes, such as advising agencies on current issues or giving citizens the opportunity to share their expertise with the state government. They can also inject transparency and public access into government processes that are often opaque. Over time, however, a board's mission may lose its significance or the board's activities may cease. To prevent waste and inefficiencies within state government, Maine should constantly be reviewing the necessity of its active boards and commissions.

Analysis

Maine has more than 300 boards, commissions, and advisory groups without counting temporary task forces or other special groups.¹⁴⁰ The large number of boards and commissions makes it difficult to find qualified applicants to fill vacancies. Currently, more than 560 vacancies exist on dozens of different boards.¹⁴¹ In addition, a number of boards still exist that report inactivity and did not meet in recent years.

A report by the Office of Program Evaluation and Government Accountability in 2008 highlighted the need to reform Maine's boards and commissions in order to reduce costs and streamline administrative processes. In 2013, the Office of Policy and Management echoed those recommendations by proposing the elimination of 17 inactive boards and commissions.

Some progress has been made. Since 2012, the Legislature has repealed more than 30 boards or commissions, including the Maine Wild Mushroom Harvesting Advisory Committee and the Travel

Information Advisory Council. The elimination of boards that have outlived their usefulness should be an ongoing process. Historically, lawmakers regularly dissolved boards that were inactive or no longer justified. Records from the Bureau of Corporations, Elections & Commissions suggest that approximately 220 boards have been eliminated in the history of Maine.

Other states are embracing similar reforms. Since 2009, at least 19 states have eliminated or consolidated state entities, including California, New Jersey, Washington and Kentucky, which have been exceptionally active in eliminating boards and commissions. In 2011, California Governor Jerry Brown eliminated the California Postsecondary Education Commission. In 2010, New Jersey Governor Chris Christie signed a bill that eliminated more than a dozen inactive boards, commissions, committees, councils, and task forces.¹⁴²

Recommendations

- Dissolve all inactive boards and commissions that have not met or produced substantive work in the last year, except those that are meant to rarely convene to discuss specific matters.
- Direct the Office of Program Evaluation and Government Accountability to compile a list of duplicative, unnecessary, or outdated boards and commissions to be consolidated or eliminated.
- Pass a law that requires the Legislature to regularly re-examine the value of existing boards and commissions.

Ending Certificate of Need

The Problem

Certificate of Need (CON) laws, first enacted in Maine in 1978, require health care entities to obtain government approval—and navigate a lengthy and expensive process of bureaucratic review—before making large expenditures to expand services, build new facilities, or purchase additional equipment. These laws, which have been rejected by the federal government and 15 other states, limit competition in the health care system and drive up costs.

Analysis

Originally, proponents of Maine CON laws sought to limit unnecessary construction of medical facilities and duplication of health services, which they feared would increase health care costs. In order to regulate health care investment, a convoluted bureaucratic process was designed to review applications through the Department of Health and Human Services (DHHS).

Medical facilities—including nursing homes—must submit a CON application if their proposal includes a new capital expenditure over certain thresholds, an expansion of current bed capacity, transfer of ownership, among other criteria. Health care entities seeking to make an investment under the purview of CON regulations commonly face four to ten months of delays, hearings, and analyses before the DHHS Commissioner makes a final decision.

Not only are health care providers asked to spend copious amounts of time amid the application process, they are also required to pay substantial fees. It costs providers \$1,000 in fees for every \$1 million in proposed expansion, at least \$5,000, and up to \$250,000 per application.¹⁴³ From 2018 to 2020, the average applicant spent nearly \$20,000 in fees.¹⁴⁴ The application process for a Certificate of

Need requires multiple stages of review, including a mandate that other hospitals weigh in on applications that their competitors have submitted.

Hospitals represented within the CON review committee have an incentive to vote down these bids from competitors. The process consumes hours of Maine Department of Health and Human Services staff time, as well as distorting economic incentives for medical care providers. A facility should be allowed to make its own investments for its own gain. For an industry already plagued with supply shortages, the CON process provides no discernable gain for patients, and has the well-documented effect of further restricting access to quality medical care.

Not only do CON laws impose a heavy burden on medical facilities, after decades of data collection and analysis, it is clear that CON laws do not control costs, as they stifle competition in the health care industry. A study published in the *Journal of Public Health* in 2016 that analyzed almost two decades of data shows that CON laws lead to a 3.1% increase in health care spending in the states that have enacted such laws.¹⁴⁵ The American Medical Association has promoted abolishing CON laws for years, observing that a huge body of evidence suggests CON laws do not contribute to improved medical services.¹⁴⁶

There is also evidence that CON laws drive up prices by fostering anti-competitive barriers to entry. Countless examples abound of bureaucratic mistakes in gauging public need for additional health care infrastructure. In 2019, when Nepalese immigrant Dipendra Tiwari wanted to create a home health care system designed specifically for Nepalese immigrants in Louisville, Kentucky, his application for a Certificate of Need was rejected. Due to Kentucky's arbitrary and overly-broad requirement that only counties with a home health need exceeding 250 people be granted a CON, Tiwari was not allowed to take a chance and attempt to serve his community.¹⁴⁷

CON may also contribute to wasteful misallocation of resources, due to bureaucratic misunderstandings of how markets for health

care services function. For example, in 2009, a request for CON by MaineGeneral to build a new 226-bed hospital in Augusta was denied by the DHHS; officials only agreed to let the project move forward if the number of beds was reduced to 192. In 2014, reports surfaced that the new facility was operating at full capacity 26% of the time, and that patients admitted to the hospital were often occupying emergency room beds until beds opened up on other floors.¹⁴⁸

Mark Botti from the U.S. Department of Justice spoke before a joint meeting between the CON Special Committee of the Georgia House of Representatives and the Health and Human Services Committee of the State Senate in Washington, D.C. His testimony reflects what economic experts and policymakers have known for decades: “Certificate of Need laws pose a substantial threat to the proper performance of health care markets. Indeed, by their very nature, CON laws create barriers to entry and expansion and thus are anathema to free markets. They undercut consumer choice, weaken markets’ ability to contain health care costs, and stifle innovation.”¹⁴⁹

During the State of Civil Emergency declared in response to COVID-19, the office tasked with administering CON applications allowed hospitals to submit a notification of temporary increase of capacity for emergency beds, enabling an expedited CON application and review process.¹⁵⁰ Nursing homes could apply for a fast-tracked application, but had to wait for DHHS approval before increasing bed capacity.¹⁵¹ These facilities were required to submit a full CON application to make their temporary expansions permanent after the state of emergency ended.

If these rules can be suspended during a public health emergency to avoid a shortage of hospital resources, why would a Certificate of Need be necessary at any other time? In the realm of basic economics, increasing the supply of products or services provides many benefits to consumers, as market forces push businesses to lower prices, innovate, and increase quality in order to attract and retain customers.

Recommendations

- Repeal Maine's Certificate of Need laws.
- Raise capital expenditure thresholds to exempt as many projects as possible from CON requirements.
- Exempt capital expenditures that result in no net increase in MaineCare costs from CON requirements.

Reforming Medicaid (MaineCare)



The Problem

Spending on MaineCare—Maine’s Medicaid program—has ballooned since 2003, when substantial expansions of the program drove enrollment and expenditures to unprecedented levels. Costs continue to rise after Maine voters approved expansion of the program under the Affordable Care Act (ACA) in late 2017. In the following fiscal year, total MaineCare spending surpassed \$2.7 billion, about \$12,330 per recipient, or \$7,154 per eligible resident. Despite efforts in recent years to stabilize costs, MaineCare still accounts for nearly one-third of the state budget, an unsustainable and unmanageable sum.

Analysis

Government does not respond to economic incentives, plain and simple. Some say that this is precisely why we should adopt a “universal” or “single-payer” health care system, because the state will not limit coverage based on who can pay. In reality, this scheme distorts health care markets, crowding out private investment from insurance companies and medical providers, and in the end, limits consumers’ options for coverage. The state can only spend what it can raise from the people in taxes, and by law, must balance its budget every year. It is not immune to the reality of limited resources, and must react by rationing care, increasing fees, or reducing reimbursement rates for medical providers.

Government should not be determining what insurance coverage options are appropriate for individuals. Market forces are well-suited to reward services that lower costs, enhance quality, and promote choice. In order to aid individuals and families who are truly struggling to achieve independence, a core objective of the Medicaid program, government action can and should play a limited role.

MaineCare is an important public health insurance program that provides medical care to, as of September 2022, about 354,000 vulnerable Maine adults and children living in or just outside of poverty.¹⁵² However, its growing budget has crowded out other spending priorities and threatened Maine’s long-term fiscal stability.

In 2021, the percentage of state budget funds dedicated to MaineCare accounted for 29% of Maine’s total expenditures, down from 34% in 2018.¹⁵³ This is likely due to the billions spent by DHHS and Maine Department of Labor under other pandemic-era welfare and unemployment programs over 2020 and 2021. Spending on MaineCare has increased by more than 19% since voters approved Medicaid expansion at the ballot in late 2017.¹⁵⁴

The most substantive driver of these ballooning costs is Medicaid expansion. As of October 1, 2022, nearly 100,000 people are enrolled through MaineCare expansion, 86% of whom are able-bodied adults without dependent children.¹⁵⁵ In 2018, the Maine Health Access Fund estimated that Maine taxpayers will pay over \$454 million in 2021 alone to cover able-bodied, childless adults who are not caretakers.¹⁵⁶ Nearly three-quarters of this group are between the ages of 19 and 49.

Legislators should rein in MaineCare eligibility to ensure the most vulnerable are provided for before those who are able to work. Reforms must be made to control spending and focus resources on Maine’s most vulnerable populations, including the elderly, children, and the disabled. Even though expansion is heavily subsidized by federal funds at the moment, the difference in the federal reimbursement rates for expansion (90%) versus traditional Medicaid (64%) creates adverse incentives for Maine’s most needy to receive care. This means that in the event of cost overruns, state leaders are more likely to divert funds from traditional Medicaid recipients—seniors and the disabled—because that population costs MaineCare more per dollar than the expansion population.

Many of the benefits that MaineCare offers—including prescription drugs, physical and occupational therapy, vision and eye care, chiropractic care, and other services—are not federally-mandated. Collectively, these optional services account for hundreds of millions of dollars each year. Maine is one of just six states, plus the District of Columbia, that provide Medicare Savings Program (MSP) benefits above the federal minimum.¹⁵⁷ Judiciously limiting benefits to bring Maine’s generous coverage in line with national norms could be a source of substantial savings and enable higher quality services for those who truly need them.

Lawmakers should continue to redirect funds from ineffective programs like the Fund for a Healthy Maine (FHM) to essential MaineCare services. Seeded by payments from the multi-state tobacco settlement in 1998, the Fund has received more than \$1 billion, and spent more than \$215 million since then,¹⁵⁸ largely on efforts to discourage smoking among adults and children, with little discernible results.

Over \$65 million was allocated to FHM for Fiscal Year 2020-21 alone.¹⁵⁹ Rates of smoking and tobacco use overall have been falling steadily since the 1970s, and will continue to do so, with or without state-funded marketing campaigns.¹⁶⁰ These funds should be used to supplement Mainecare costs and to provide health care for Maine’s most needy residents instead of funding ineffective public advertisements.

Recommendations

- Exclude able-bodied, childless adults from Medicaid eligibility to ensure care for the most vulnerable populations: children, the elderly, and the disabled.
- Redirect revenue from the Fund for a Healthy Maine to important MaineCare initiatives like expanding access to primary care.
- Reduce Medicare Savings Plan benefits to the federally-mandated minimum.
- Align reimbursement rates of behavioral health services with other New England States.
- Reduce coverage of optional benefits.
- Resist attempts to implement costly, inefficient government-run health care schemes.

Promoting Health Care Access in Rural Maine



The Problem

Due to physician and other health care worker shortages in rural areas of the state, Maine must employ policies that utilize market forces to give more people access to affordable primary care. States throughout the country are addressing this issue by connecting doctors and patients through the use of telemedicine and remote area medical clinics.

Analysis

According to an analysis conducted by the Robert Graham Center, Maine fares better than most states in terms of the total number of practicing primary care physicians (PCPs) as a proportion of the state population. The current population to PCP ratio in Maine is 1,067:1, far lower than the national average of 1,463:1.¹⁶¹ The center estimates Maine will need an additional 120 PCPs by 2030 to remain at current levels of utilization.

Although Maine is largely on-par with national physician staffing numbers, the American Association of Medical Colleges (AAMC) 2021 State Physician Workforce Data Report found that, in 2020, 39.3% of all Maine physicians were at least 60-years-old, the highest percentage in the nation. This signals that a significant portion of the workforce are quickly approaching retirement.¹⁶²

In 2015, a University of Southern Maine study reached the conclusion that “Maine does not have a primary care shortage.... Rather, the state’s physician supply problem is with physician distribution.”¹⁶³ For example, Oxford and Somerset counties have less than 60 PCP per 100,000 residents while Cumberland and Hancock counties have 145 or more. Seven Maine counties – Androscoggin, Oxford, Sagadahoc, Somerset, Waldo, Washington,

and York – have PCP rates well below the national average of 90.2 per 100,000 residents as of 2015.

Many studies have determined that telemedicine and remote area medical clinics are among the best methods of delivering life changing care to populations that do not have affordable or reliable access to primary care. A study from the University of Southern Maine in 2015 found that positive effects of telemedicine services include unburdening overloaded acute care systems, as well as improving primary care and remote, in-home, and emergency medical care.”¹⁶⁴

Telemedicine is a health care practice whereby doctors remotely evaluate, diagnose, and treat patients through the use of telecommunications, i.e. audiovisual consultation. Remote area medical clinics are temporary “pop-up” medical clinics run by nonprofit health entities all over the world that provide care to underserved populations. Both concepts are emerging as realistic short and long-term solutions for growing access to primary care medical services in rural areas of the country.

Telehealth can provide an array of care, including monitoring patients for strokes, eye exams, and even the prescription of certain drugs.¹⁶⁵ By forgoing in-person visits, telehealth can save patients time and transportation expenses. It can also save hospital staff time by eliminating paperwork required for in-person evaluations. Some states have changed their regulations and now allow patients to access telehealth services from home and school, and Maine should do the same.¹⁶⁶

Several states including New Hampshire, Connecticut, and Delaware allow for the prescription of controlled substances via telehealth without an in-person evaluation by a physician,¹⁶⁷ but Maine does not.¹⁶⁸ As part of the state’s COVID-19 response, Governor Mills briefly allowed physicians in Maine to forego face-to-face visits before prescribing.¹⁶⁹ Lawmakers should follow in the footsteps of other states by permanently adjusting telehealth laws so that physicians can provide a full range of private practice care via telehealth in the future.

Recommendations

- Expand the range of telehealth services that physicians can provide from out-of-state.
- Require reimbursement for facility and transmission to make telemedicine more financially attractive to providers.
- Eliminate payment parity within Medicaid for in-person vs. telehealth visits to attract more consumers to telemedicine due to its lower costs.
- Make permanent the suspension of telehealth regulations under the Civil State of Emergency in response to COVID-19.

Expanding Access to Skilled Medical Providers



The Problem

Maine suffers from a chronic lack of health care workers, yet our state's regulatory environment does not appeal to new professionals. Unnecessarily restrictive medical licensure regulations, applications, and fees prevent doctors, nurses, and other health care workers from providing the full range of services they could provide but for these limitations.

Analysis

Maine already has too few doctors, and the shortage is projected to become worse over the next several years.¹⁷⁰ Unfortunately, in 2020, Maine ranked last out of all 50 states for patient satisfaction of physicians.¹⁷¹ We could increase competition by getting rid of rules that prevent doctors and medical professionals from other states from practicing in Maine, which would likely improve patient satisfaction, in addition to relieving the overworked physicians who are currently practicing in our state.

Maine has taken a step in the right direction by allowing physicians from other states to practice in Maine; however, these physicians can only act as consultants for physicians, physician assistants (PAs), and advanced practice registered nurses (APRNs) who are already in Maine.¹⁷²

In addition to the steep cost of licensure, physicians must wait an inordinate amount of time for state bureaucracy to process their application before they can start practicing: 45 to 90 days on average.¹⁷³ The COVID-19 crisis has made it clear that permanent and temporary licenses could be approved in far less time. Under Governor Mills' Executive Order No. 16, physicians in good standing

and licensed in other states were able to apply and receive emergency licenses within 48 hours during the Civil State of Emergency.¹⁷⁴ Confusingly, these rules were relaxed in order to protect patient health and safety, but Gov. Mills restored them for the same reason when the Civil State of Emergency ended.

Physicians should be incentivized to file for licensure to the greatest extent possible. Completely removing fees associated with medical licensure in Maine would help accomplish that goal. In Maine, there is a \$600 nonrefundable application fee that must be submitted with a physician's initial application, and an additional \$100 must be included to cover the cost of a jurisprudence exam. Especially for recent medical school graduates, an initial \$700 fee could easily deter applicants from bothering to apply for licensure in Maine. Maine's fee, on average, costs several hundred dollars more than most U.S. states.¹⁷⁵ Governor Mills responded to the COVID-19 crisis by waiving licensure fees for physicians; lawmakers should make changes like this permanent.¹⁷⁶

Currently, practicing physicians are required to renew their licenses in Maine every two years. There is no real need for physicians to re-apply for licensure—Maine's medical licensure board can take away a physician's credentials at any point in time. This is a much stronger mechanism by which physicians are incentivized to provide adequate services to their patients. In order to save physicians' money and time, and to reduce the risk of lapsed licensure, physician licenses should be automatically renewed every two years.¹⁷⁷

Maine legislators must seriously consider how to incentivize nurses to practice in-state, since the demand for nurses is steadily increasing. The U.S. Bureau of Labor Statistics projects the demand for skilled nurses will increase by 12% from 2018 to 2028, a much greater shift than other occupations.¹⁷⁸ As of 2019, around 25,000 nurses practice in Maine.¹⁷⁹ This means that by 2028, Maine will need about 3,000 more practicing nurses to keep up with demand.

As a response to the COVID-19 crisis, Governor Mills issued Executive Order No. 35, which waived licensure fees for nurses who want to practice in Maine, and decreased the amount of time taken to review licensure applications.¹⁸⁰ Given the demand for nurses that existed prior to COVID-19, it makes sense for Maine to eliminate licensure fees permanently and to continue using a more expeditious form of review to ensure that nurses can start practicing as quickly as possible.

Physician assistants and nurse practitioners are an invaluable contribution to Maine's health care system, and they should be given the authority to implement their full range of expertise. In March 2020, legislators passed and Governor Mills signed LD 1660, ending requirements for PAs to obtain a certificate of registration (in addition to a license), and for those who have practiced for more than 4,000 hours, to enter into a written agreement under a physician.¹⁸¹

Also in Executive Order No. 35, Mills removed Maine's restriction on prescribing remotely for both physician assistants and nurse practitioners. If Maine's health care providers can operate safely without these pointless restrictions during a public health crisis, they should be able to do so during stable times.

Recommendations

- Grant licensing reciprocity to all skilled medical professionals from all 50 states.
- Eliminate the costly licensure application fees for health professionals, which only serve to deter potential health professionals from working in Maine.
- Replace the regular medical licensure process for physicians, nurses, physician assistants, and nurse practitioners with the expedited process utilized under the COVID-19 emergency.
- Restore the expanded scope of practice regulations for physician assistants and nurse practitioners allowed under the COVID-19 emergency.

Promoting Sustainable Growth at the Local Level



The Problem

While the entire state of Maine may not be facing a “housing crisis,” renters and owners alike are feeling the pinch of higher housing costs since the economic shock born of the state and federal responses to the COVID-19 pandemic.

The fact is, this problem is much more acute in the areas with higher population density and economic opportunities, especially the southern, and more-urban York, Cumberland, and Androscoggin counties, than the more sparsely populated rural areas. Instead of relying on mere anecdotes, policymakers should utilize the comprehensive perspective that economic indicators provide.

Lawmakers in Augusta and councilors in localities can become a bigger part of ensuring a healthy housing market by encouraging a culture of growth instead of pushing for more regulation.

Analysis

As more Americans take up remote employment, workers across the nation are looking for their next home base. A 2021 survey showed the smallest percentage of Americans moving in 70 years (8.4%), but that 1-in-5 are considering a move in 2022.¹⁸²

FlexJobs, a remote job board, ranked Maine fourth in the nation and second in New England in its list of the best states to get a remote job.¹⁸³ There is no question that the shift to more remote work makes living in Maine more attractive to many who previously had to live in or near a big city. Madeleine Hill, president of Maine Association of Realtors, pointed to “Maine’s quality of life and the

emergence of teleworking” as the driving forces behind the state’s hot real estate market, and the growing popularity of the state as a remote working destination.¹⁸⁴

In late 2021, the Maine Association of Realtors reported that the median price of an existing single-family home in Maine had risen 10% from October 2020 while the national median home price rose more than 13% in that time.¹⁸⁵ The market has since cooled somewhat, with home mortgage rates hitting highs not seen since 2001 as the Federal Reserve has consistently ratcheted up the interest rate at which banks may lend to other banks.¹⁸⁶

In October 2022, Mark Zandi, chief economist at Moody’s, predicted that home prices nationally would decline about 10% over the following 12 months, but in the event of a recession, that trough could be 15 to 20% but largely dependent on regional factors. The looming stress on Maine’s housing market is evident in Moody’s third quarter housing index, which estimated that the greater Portland market is 33% overvalued, Lewiston-Auburn is 21% overvalued, and Bangor 14% overvalued.¹⁸⁷

Limited supply is a significant factor driving persistently higher housing prices in Maine. In October 2019 the market had more than four months of for-sale inventory, about a year later that was down to less than two months. While some may frame this as an issue affecting the vast swaths of the state, a report from Up For Growth (UFG), a nonprofit membership organization which was “founded to elevate and amplify the need for solutions” to the housing issue, estimates that Maine is short about 9,000 housing units to meet workforce demand. In a state with 1.3 million residents, that doesn’t seem so bad. The catch is that more than 8,000 of those units are needed in the Portland-South Portland metro area, encompassing York and Cumberland counties. In other words, 90% of the housing problem affects about 40% of the state’s population.¹⁸⁸

This vision of Maine as a remote employee’s dream can be fulfilled, but only if the housing market can grow to accommodate the extra residents, and if prospective movers see the state as their best financial option in comparison to other states. This calls for a culture of growth at both the state and local levels.

A broad consensus in economic policy is the recognition that a household is considered “rent-burdened” when rent costs are greater than 30% of total household income. The logic of this idea is presented in findings of a study supported by real estate website Zillow, which showed that “homelessness is higher in areas where rents make up a larger share of income.”¹⁸⁹

This assertion supports other research by scholars such as Salim Furth of the Mercatus Center at George Mason University. In a paper published in the journal *Critical Housing Analysis*, Furth uses data from various New England sub-regions to “rewrite the equation for rent burden as a sum of four factors: rent gap, income gap, excess size cost, and demographic baseline.” He ultimately shows that “high rent is the primary cause of unaffordability in high-cost, high-wage metro areas,” like the southern counties of Maine and New Hampshire.¹⁹⁰

In other words, the affordability of housing is a function of the overall economy. It is intricately related to overall economic vitality and mobility, but Maine’s recent approach to economic development, predominately made up of corporate welfare programs, ever-increasing grants and exemptions to select employers and industries, has not borne adequate results to help Mainers better afford daily life. This government-centric fiscal philosophy rears its ugly head in housing policy as well. Maine must be more competitive in fiscal and regulatory policy to drive real growth, which means more businesses, jobs, and housing.

Former Speaker of the Maine House, Ryan Fecteau drafted a bill in the Second Session of the 130th Legislature to tackle what was deemed to be a crisis by a special commission on zoning and land use reform.¹⁹¹ Some of the commission’s recommendations, which became part of Fecteau’s LD 2003, took a reasonable approach to

clearing away excessive barriers to housing development. For instance, the bill guarantees the right of every single-family homeowner to build an accessory-dwelling unit (ADU), such as a tiny home or in-law apartment. This affirms the rights of individual property owners, providing them another potential stream of income, and offering others a place to live in a desirable area.

Unfortunately, other aspects of the final version of the bill went too far, injecting greater state control over local planning and opening municipalities to legal scrutiny from the federal Department of Housing and Urban Development (HUD). While the bill included some funds to help municipalities with drafting mandated ordinances, many are concerned that higher mandated densities will necessitate greater spending on infrastructure and education on the local level.

With implementation of LD 2003's new mandates coming in the summer 2023, some local Maine officials worry that their towns may face similar challenges to other small New England towns—like Ipswich, Massachusetts—which is being forced to accept dramatically increased density in their town centers due to overbearing state planning.¹⁹²

Some legislators and local leaders in opposition also allege that both the overt requirements and the hidden unintended consequences of LD 2003 would create a host of mandates which municipalities would have to fund.¹⁹³ With greatly increased housing density, many towns would have to increase funding for water and sewer infrastructure, school systems, and everything in between. They point to Article IX, Section 21 of the Maine State Constitution, which states:

“...the State may not require a local unit of government to expand or modify that unit’s activities so as to necessitate additional expenditures from local revenues unless the State provides annually 90% of the funding for these expenditures...This section must be liberally construed.”¹⁹⁴

This particular question may ultimately be settled in court. Would a liberal construction of this passage allow the technical assistance funding currently provided in the bill to fulfill the state's constitutional responsibility to fund 90% of the cost of requiring localities to "expand or modify" their activities?

To get around the new mandates of LD 2003, as well as other future attempts to implement top-down federal and state planning of local development, towns may choose to eliminate zoning altogether and dissolve their comprehensive plan. While this comes with some risk, since towns with comprehensive plans receive some state and federal assistance, local leaders may choose to act boldly to economic opportunity and sustainably grow their towns out of this unstable period.

Furth also studied the zoning peculiarities of Maine's localities, and found that whether a Maine town is zoned or unzonned is largely a random occurrence. While some factors, like population, or its distance to Boston or a major highway, may more highly influence this decision, Furth's model found that these factors only explain about 16% of the correlation, versus an entirely random model. While the largest towns are zoned, Furth writes, that "it is more likely that zoning's association with higher growth is due to towns adopting zoning when they face development pressure."¹⁹⁵

Recommendations

- Reward municipalities which relax zoning rules with greater revenue sharing dollars.
- Limit higher single-family zoning density mandate to more population-dense towns.
- Remove reference to federal Fair Housing Act at Title 30-A §4364-C.

Protecting the Rights of Property Owners



The Problem

Instead of discarding old ideas and onerous regulations, some believe that restricting individuals' abilities to use their own property will help solve current issues with housing affordability. From traditional landlords, who rent out living space in monthly or yearly increments, or single-family home owners who list a spare room in their home for a few weeks during the summer to make a little extra money, all should be encouraged to use their assets for productive purposes.

Analysis

Recent years have seen a renewed effort to pass rent control in several Maine communities, yet advocates of rent control ignore fundamental laws of economics. Ultimately, rent control inflicts harm on the very people its advocates are trying to help.

Economists are in virtually unanimous agreement that rent control reduces the quantity and quality of housing.¹⁹⁶ The harmful effects of rent control are many and far-reaching:

1. By preventing rents to match the market equilibrium price (where supply and demand meet), rent control discourages new housing construction and diverts investment to more profitable markets.
2. A costly bureaucracy is typically needed to enforce rent control policies. Rental units must be registered, detailed information must be collected, systems for determining rents must be created, and hearing and appeals processes must be established.

3. As the profitability of rental properties declines, landlords lose the incentive to invest in renovations and maintenance, leading to deterioration in the quality of housing stock.
4. Property tax revenues decline as reductions in investment and upkeep lead to lower rental property values.
5. Due to the scarcity of vacant housing in many rent-controlled communities, prospective tenants must pay substantial finder's fees to obtain a rental unit. Low-income people are especially hard-hit by these costs.

More than anything else, rent control is a political tool. At first glance, it sounds like it would help the poor and combat housing inequality. In fact, it tends to benefit the well-connected and those who are able to get to the front of the line for rent-controlled units.

In response to overwhelming consensus among experts that the costs of rent control substantially outweigh its benefits, the vast majority of states have either prohibited or greatly constrained rent control. Yet, according to the National Multifamily Housing Council, Maine is one of just nine states that lack any state laws preventing localities from adopting rent control.

In Portland, the state's biggest city, rent control has been in effect since September 2021. The rules cap rent annual increases by no more than 10% of the rent paid in June of 2020, but also allow landlords to "bank" allowed increases over that 10% for successive years based on the rise in the Consumer Price Index (CPI), or whether a new tenant moved into the unit.¹⁹⁷

In November 2020, Portland voters passed an Inclusionary Zoning ordinance, also known as the so-called "Green New Deal," as a way to fix the local housing crunch. But, instead of promoting more housing, it set limits on developments of 10 or more units. Developers of these projects must price at least 25% of units to be affordable (up to 30% of income) for people making 80% of the median area income. These are considered to be "workforce housing" by the city. Developers may choose to pay \$150,000 per unit to the city's "Affordable Housing Fund" as an alternative to providing workforce units.¹⁹⁸

This new set of rules placed even stricter limits on development than had existed before 2020, which required 10% of new units to be workforce affordable, at which the income level was equal to the area median income. MaineBiz reported on how the affordability rules stack up in 2022:

“Under the new rules, the maximum affordable rent must include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. The current maximum affordable rents for workforce units are \$1,189 a month for a studio apartment, \$1,398 for a one-bedroom apartment and \$1,598 for a two-bedroom apartment.”¹⁹⁹

Unfortunately but not shockingly, these rules have prompted developers to pursue 9-unit projects instead of 10- or 20-unit buildings, and stratified development to either subsidized workforce housing, or high-end luxury apartments, built and rented by those who can afford to eat the city’s flat \$150,000 per unit fee. Housing supply was on the rise before the vote on the “Green New Deal.” MaineBiz reported in October 2020 that building permits had risen 149% year-over-year from 2020, and 72% between 2019 and 2020.

But a January 2022 report by real estate company Boulos & Co. found that about a year after passing the more restrictive development rules, building in Portland took a nosedive. The report found that 756 units in the city were slated for construction in late 2020, but since then “only 139 units have been put on the books across three projects—a decrease of 81.6%.”²⁰⁰

It is important for Portland and other towns in Cumberland and York counties, where Maine’s housing crunch exists, to recognize the need for housing that is affordable for middle- and lower-income earners. But, policymakers’ desire to encourage “affordable housing” proposals risks crowding out or stymying other market-rate projects and creates a toxic cronyism in which private firms rely on public funds to complete their projects.

In addition to rent control policies, another damaging form of rental regulation has gained traction in Maine in recent years, including the communities of Sanford, Waterville, and Yarmouth. Several municipalities have recently enacted ordinances which compel landlords to register their rental properties and allow town officials to inspect rental units without a warrant. Mandatory rental inspections violate the Fourth Amendment and may deter entry into the housing market. Mainers should not lose their privacy rights just because they choose to rent a property.

Local and state policies have also begun to draw battle lines around short-term rentals (STRs) such as those listed through websites like Airbnb.com, which are conventionally defined as rentals lasting less than 30 days. STRs have been used as lucrative income streams by Maine property owners for years, and especially since the coronavirus pandemic, rural hosts have received more and more attention from vacationers looking for a different kind of experience than a hotel. In 2021 alone, rural Airbnb hosts earned more than \$3.5 billion, after surging 110% from 2019.²⁰¹ Just in 12 rural Maine counties (all but Androscoggin, Cumberland, Penobscot and York), Airbnb bookings totaled more than \$95 million, up more than 40% from 2018.²⁰²

Recent changes in law passed in LD 2003 opened the door to unlimited municipal regulation of STRs. Since January 2018, the City of Portland has required all STRs in the city to be registered, and limits anyone from registering more than five at one time.²⁰³ Fees to register STRs within non-owner occupied buildings are double that of those in a building the owner lives in.²⁰⁴

In November 2022, Portlanders will face yet another referendum on short-term rentals, which would significantly raise fees associated with registering them and limit the total number of non-owner and non-tenant occupied units to either 1% of the total long-term rental stock or 250 units, whichever is fewer.

Other municipalities, like Bar Harbor,²⁰⁵ South Portland,²⁰⁶ and Cape Elizabeth²⁰⁷ have also enacted restrictive regulatory structures around STRs, requiring licensure, mandatory

inspections, and payment of fees to list one's property for even just one night per year. Most often, in addition to a general not-in-my-backyard (NIMBY) attitude, proponents of regulating STRs begin with the assumption that more STRs in the market means higher rents and housing costs for residents. But is this assertion supported by economic data?

An August 2022 Portland Press Herald editorial was entirely based on the argument that STR hosts "tie up housing stock and distort the wider market," boldly claiming that this fact "is in no doubt." They lament, "if only the market could keep itself in check."

Of course the presence of STRs in a particular area affects the market. The question is: How much? Researchers from the University of Southern California, California State University and the National Bureau of Economic Research attempted to answer this question in a working paper. Authors found that "Airbnb listings increase the supply of short-term rental units and decrease the supply of long-term rental units" but the more important question is whether these effects are swallowed up by more prominent effects in the market.

On this question, researchers note that "the effect of Airbnb listings on rental rates and house prices is decreasing in the owner-occupancy rate" meaning that with fewer available rentals, the effects of STRs in a particular market are diminished. For instance, "at the median owner-occupancy rate (72%), we find that a 1% increase in Airbnb listings leads to a 0.018% increase in the rental rate and a 0.026% increase in house prices."²⁰⁸

In the Portland-South Portland Metropolitan Area, where the supply crunch is predominantly located, the owner-occupied housing rate is 82%. On that basis, owners who choose to list their properties as short-term rentals play a smaller role in the rise in prices.

Portland had 468 registered short-term rentals in September 2018 and 810 in August 2022, an increase of 73% in just four

years. Using the working paper's formula, one could estimate that short-term rentals accounted for just a 1.02% increase in rent and a 1.4% increase in home prices over that span. Today, the median home listing is \$550,000 but it was below \$360,000 in late 2018. Corrected for inflation, the average home price in the area rose 38.6% in the same time period. If less than 1.5% can be attributed to short-term rentals, clearly there is much more happening in the market.

If the prominence of Airbnb in Portland has little to do with rising housing costs, short-term rentals have just become an easy scapegoat. In reality, most of those who list STRs, whether as just a room in their house or the entirety of another property, do so in order to earn extra income or invest in their property to eventually transition it to a long-term rental.

No matter the intentions of particular policymaking, attaching more strings to property ownership will make it even more difficult for Mainers to get ahead. Further restrictions on the rental market, whether short-term or long-term, will do nothing to expand housing supply and lower prices.

Recommendations

- Prohibit municipalities from implementing rent control, creating rental registries, or allowing warrantless property inspections.
- Repeal the open door to greater municipal regulation of STRs at Title 30-A §4364-C.

Ensuring Transparency & Efficiency in Broadband Development



The Problem

As virtual schooling, remote work, and telehealth services expand as a result of the reaction to COVID-19, ensuring quick and reliable access to the internet has become a front-and-center issue across the United States.

While affordable high-speed internet is crucial to building thriving Maine communities, government intervention in the broadband market often results in a more inefficient and costly approach that, in the long run, weakens consumer choice and burdens local taxpayers. While this occurs at any level of intervention, some are more economically destructive than others.

Analysis

In response to slow internet speeds and limited broadband access in some areas of Maine, a growing number of localities are building new broadband networks, known as government-owned networks (GONs), or forming quasi-public Broadband Utility Districts (BUDs) with other adjacent towns to build out internet infrastructure.

Recent efforts to establish these arrangements in Maine communities like Knox County, Southwestern Waldo County, the Town of Hampden, and the City of Caribou are propelled by millions of dollars in federal American Rescue Plan Act (ARPA) and Infrastructure Investment and Job Act (IIJA) funds, and disbursed directly to municipalities and counties to be used for various purposes over 2020 and 2021. Both pieces of legislation provide for funding to be used for broadband development, thus many Maine localities have rolled out plans to spend their share on building new networks.

Despite claims that municipal broadband delivers significant economic benefits to communities, the costs of public-sector construction and management of fiber-optic networks—and the effects of deterring private-sector investment and undermining competition—are too high.²⁰⁹ Lawmakers in Augusta should carefully consider guardrails on publicly-owned infrastructure projects to better protect taxpayers' interests and consumers' choices.

Government-owned networks have a dubious track record of financial feasibility. Several examples from around the nation show that when municipalities invest in GONs in areas already served by private telecommunications companies, the duplication of services often leads to costly inefficiencies and less private-sector investment. Plus, municipalities rarely account for future maintenance costs as a result of establishing a GON. Considering many publicly-owned local networks require substantial bonding to get off the ground, the economics of GONs do not allow for local taxpayer confidence that their investment will be recouped in any reasonable timeframe.

Using data over a five-year period, a 2017 University of Pennsylvania Law School study of 20 GONs around the United States found that only two were on track to recover their total costs over the course of their useful life expectancy, between 30 and 40 years. Eleven did not bring in enough money to cover current operating costs, and five of the nine cash-flow positive projects were projected to take over 100 years to recover their costs.²¹⁰

Pursuing purchase and construction of a GON is a monumental undertaking for any municipality, especially in sparsely-populated rural areas. When the real price tag of a GON is fully realized, municipal governments are often forced to reprioritize in order to maintain it, shifting funds away from services that are truly needed by local taxpayers.

Virginia and Tennessee are two large, widely-rural states that have attempted to implement GONs with little success. In 2002, the Bristol Virginia Utility Authority (BVU) created their own GON

called OptiNet.²¹¹ After BVU executives were convicted and sentenced for a corrupt kick-back scheme in 2015, the utility eventually sold OptiNet to a private provider at a loss.^{212 213} Clarksville, Tennessee developed their GON in 2007. Total costs amounted to over \$40 million and the municipality was forced to borrow millions more than their projected cost due to construction cost overruns.²¹⁴

Any sort of government-owned broadband utility may fall victim to the poor incentives of public enterprises. Recently, several clusters of municipalities in Maine have formed BUDs, which as quasi-public utilities, can access low-interest municipal revenue bonds.²¹⁵ Because of this, proponents argue that BUDs pose no financial risks to the towns which stand them up, so they are more effective than a traditional GON.

Some will argue that the services offered by public networks can increase competition by providing a low-cost option for consumers, but this ignores the crowding-out effect that government-sponsored enterprises have in their area of operation.²¹⁶ As far as economics goes, this is anticompetitive.

Public entities are disconnected from the incentive to make a profit, which means they are less prone to look for ways to save costs in order to affordably deliver internet service. Because GONs are so heavily-subsidized, this leads private companies to determine that they cannot compete in the same area as the municipal network. Governments are not known for their ability to spot emerging consumer trends and adapt to new technology, so consumers ultimately lose from this arrangement.

The state has a role to play in protecting local taxpayers and consumers in ensuring municipalities have achieved the highest level of preparedness before bonding and constructing a GON. To this end, municipalities must commission and present to residents a feasibility study, considering the myriad factors that could inhibit or encourage usage of the proposed GON. These studies should consider whether the proposal would limit or encourage competition for the service, whether any entity would provide the

service but for the municipality, the projected growth in demand for broadband services and resulting expected growth in revenue, and a full-cost accounting projection for the municipality to purchase, construct, maintain, or operate any facilities needed to sustain a GON over its lifetime.

Local planners should provide ample time for public input, as vast sums of public money will be spent, by scheduling multiple hearings and votes of local residents and governing boards before proceeding with any GON project. Taxpayers would benefit from the implementation of reforms proposed in LD 1516 from the 128th Maine Legislature, which includes some of the aforementioned policy ideas as well as other ways to ensure local budgets are safe from potential cost overruns that come from costly GON arrangements.²¹⁷

In 2019, Governor Mills signed LD 1206, which allows municipalities to charge fees for above-ground utility poles and facilities in the public right of way. This means that municipalities which operate their own GON may charge their private-sector competitors for fees for use of utility poles in the town, but allows the municipalities to skirt this cost themselves. The law unfairly favors municipal-owned utilities, including those offering broadband services, for no economic reason whatsoever. It should be promptly repealed to level the playing field.

In principle, GONs should be prohibited in the State of Maine, but if they are to exist, they should be able to compete equally with legacy providers. Unfortunately, GONs are redundant at best and savage monopolies at worst. They hold the potential to be a severe hindrance in the progression of internet service delivery within their sphere of influence. Maine should join 21 other states and move to limit or restrict local government ownership of telecommunications networks.²¹⁸

Recommendations

- Prohibit municipalities from owning or operating broadband networks that are offered to the public.
- Resist state-level efforts to expand utility districts' authority to include regional GONs.
- Require municipalities to hold multiple public hearings and votes by the town council and residents in order to establish a GON.
- Require municipalities to commission an economic feasibility study for all GON proposals.
- Require municipalities to hold funds accumulated from service fees for GONs in a separate account, in order to avoid commingling with basic infrastructure funds.
- Require municipal bonds to construct or operate a GON be secured and paid for solely by the revenues generated by the proposed GON.
- Restore "make-ready fees" for municipal GONs to utilize utility poles in public rights of way (repeal LD 1206, 129th Legislature).

Reform the State Broadband Bureaucracy to Better Serve Consumers



The Problem

In recognition of the problem of spotty access to reliable internet access across Maine, lawmakers in 2005 established the ConnectMaine Authority (ConnectMaine), a state agency to study internet availability across Maine and make grants to localities to promote access.²¹⁹ For the first 15 years of its existence, roughly \$1 million of taxpayer funds were allocated annually to the ConnectMaine Fund. In 2021, Governor Mills and legislative allies approved legislation to create the Maine Connectivity Authority (MCA), a larger quasi-public entity tasked with a similar mission and now housing ConnectMaine within it.²²⁰ MCA began its tenure in 2021 with \$150 million in federal funds in its bank account, many times more than the previous annual funding level allotted to ConnectMaine.²²¹

Analysis

Each year, ConnectMaine is required to determine criteria for and designate which areas of Maine are considered “unserved” or “underserved” by adequate broadband connectivity. Before 2021, following FCC criteria, ConnectMaine had defined “unserved” areas as those with under 25 mbps download speed and 3 mbps uploads (25/3);²²² it estimated that 11.5% of Maine households were unserved. The agency receives service reporting data from surveys of ISPs, which show an area as served when at least one household in the census bloc has access to 25/3, though not necessarily using their service.

Public broadband proponents like Peggy Schaeffer, former head of ConnectMaine, estimated in February 2021 that in order to get from 88.5% of Maine households to 95% “served,” the state will need to invest \$600 million.²²³ Serving an additional 6.5% of census

blocks, an estimated 30,000 people, would require new infrastructure in very rural areas. In this modest scenario, the government estimates a cost of nearly \$20,000 per connection, hardly a worthwhile investment for taxpayers. Surely there are better, more efficient solutions to get Mainers the internet speeds they desire.

Based on an overview of ConnectMaine’s broadband connectivity map, much of the northern counties, as well as Washington and Hancock counties, have access to download speeds under 25 mbps. For Mainers who live outside of the cities in those counties, broadband speeds are limited, but even in the population centers of Aroostook county: Van Buren, Fort Kent, Houlton, Caribou, etc, the map shows that a vast majority of households have access to 25/3, and most are served by at least 50/10 internet service.²²⁴

But, in May 2021, the ConnectMaine board voted to change the standard for broadband service in Maine, revising the definition of “unserved” to be areas where available service speeds are below 50/10, and “underserved” as those between 100/100 and 50/10.²²⁵

After the broadband bureaucracy moved the goalposts, WMTW reported in November 2021 that the state now considers a whopping 84% of Maine households underserved or unserved, instead of 11.5% under the old standard.²²⁶

MCA plans to push this unrealistic standard even further to justify more wasteful spending; they seek to fund projects in places without access to 100mbps symmetrical service.²²⁷ The agency says that it will prioritize funding BUDs which commit to offering service speeds which “include 100mbps/100mbps at least.”²²⁸ For nearly all residential consumers, 100/100 is overkill. Zoom, the online video conferencing service, recommends 3.8mbps upload and 3mbps download for high definition video calls.²²⁹ Patients using a telehealth service would require comparable bandwidth.

The federal government also spends billions of dollars on expanding broadband every year through its Rural Development

Opportunity Fund (RDOF) as well as myriad other programs.²³⁰ A Government Accountability Office (GAO) report published in May 2022 accounted for more than 100 different broad programs administered by 15 different agencies, which spent \$44 billion from 2015 to 2020 to finance infrastructure development. GAO called the funding scheme “overlapping and fragmented,” noting that millions of Americans still lack access to 25/3 service: 17% in rural America, versus only 1% of those living in urban areas.²³¹ For all the money spent by all levels of government, the “digital divide” persists and little evidence exists to show the government is playing a meaningful role in providing a solution.

Proponents of more public spending will blame ISPs for a lack of connection options in some rural communities. But according to NCTA, a telecom industry association, private companies have invested \$300 billion in network infrastructure since 2000, \$172 billion in the last decade. This has led to a 98% reduction in the price-per-megabit of data, from \$28.13 in 2000, to \$0.64 in 2020.²³² Claims that brand new quasi-public entities can deliver this service better than the private sector shows a profound misunderstanding of the industry and the economy as a whole.

In the past, ConnectMaine encouraged some private investment in broadband for local communities, but funding these sorts of projects through a state agency means that a sizable portion of the money was diverted to pay for administrative costs. In FY19, the agency spent over 26% of expenses on administration.²³³ ISPs may benefit from ConnectMaine grants, but the overall effects of market distortion and misallocation of scarce resources—even through public/private partnerships—cannot be ignored.

By taxing the people and spending their money in ways that they themselves have not voluntarily pursued, the state has misallocated Mainers’ hard-earned resources to a service which is not yet financially sustainable. Consumers acting through the market are better equipped to reward providers for affordable, valuable services. In ConnectMaine’s 2020 Broadband Action Plan, they call the lack of adequate broadband service in rural Maine a “persistent market failure.”²³⁴ By pursuing this strategy of cajoling private

investment through grants to local governments, the state's broadband bureaucracy is contributing to the crowding-out of internet service, stifling innovation in delivery of a vital service. Maine should provide a friendly environment for technology companies first before chalking up inadequate service to market failure.

Lawmakers should pursue avenues to require greater transparency of funds spent by Maine's broadband bureaucracy. A bill passed by the 129th Legislature and signed by Governor Mills moved this principle in the opposite direction. Rule-making is now merely "routine technical," instead of "major substantive," a much lower level of scrutiny for state bureaucracy.²³⁵ This means that MCA will no longer be subject to legislative review and approval for its proposed rule changes.²³⁶

The agency should be governed under a higher threshold of rulemaking because, as stated in Maine law, its rules, "Require the exercise of significant agency discretion or interpretation in drafting" and because they are likely to "result in a significant increase in the cost of doing business, a significant reduction in property values, the loss or significant reduction of government benefits or services, the imposition of state mandates on units of local government...or other serious burdens on the public or units of local government." ²³⁷ There is little doubt that Maine state government bureaucrats' actions in the internet service market distort price signals and contribute to a rise in the costs for the ISPs who have been in business for decades.

Recommendations

- Require the commission of an economic and financial feasibility study before any state broadband grant is issued.
- Prohibit state broadband funding in areas already served by federal grants.
- Restore rulemaking by ConnectMaine and MCA to the “major substantive” standard.
- Initiate a legislative audit of ConnectMaine and MCA.
- Remove grantmaking authority from ConnectMaine and MCA, require it to focus on detailed reporting of prices and service access data.

Fostering Innovation in Internet Service



The Problem

According to Broadband Now, more than 97% of Mainers live in a Census block which is served by internet plans with download speeds of at least 25 megabits per second (mbps), as of January 2023. More than 92% are served by speeds of at least 100 mbps download.²³⁸ Yet, Maine's average download speed of 151 mbps ranks fourth-slowest in the nation. At the same time, only 4.5% of residents have access to a low-priced internet plan, defined as \$60 or less per month. This pales in comparison to the national average of 51.5% access to an affordable plan.²³⁹

Ensuring better and more affordable access to the internet should be a goal for policymakers, but this is best accomplished through market-tested innovation and entrepreneurship, not through one-size-fits-all government regulation.

Analysis

In 2015, the Federal Communications Commission (FCC) declared that internet service providers (ISPs) would be regulated as public utilities under Title II of the Federal Communications Act, instead of as "information services" under Title I. Proponents claimed that the order would usher in a new era of so-called "Net Neutrality," protecting consumers from predatory "throttling" of internet bandwidth.

In the 1990s, President Bill Clinton and Congress under Speaker Newt Gingrich committed to maintain the culture of innovation and information decentralization that is at the heart of the World Wide Web. After an era of explosive growth in internet services, impressive stories of rags-to-riches entrepreneurship, and few instances of malfeasance by ISPs, there was little need for the FCC to tighten regulations on internet access in 2015.

In the two years under Title II governance, ISPs decreased their investments in local broadband infrastructure by \$2.4 billion, primarily in rural areas.²⁴⁰ This led to stagnating growth in the average speed of broadband connection in the United States, which had been climbing steadily since 2010.²⁴¹ According to a US Telecom Issue Brief, broadband investments increased by at least \$1.5 billion after net neutrality regulations under Title II were repealed in 2017.²⁴²

In 2017, FCC Chairman Ajit Pai reversed the Obama-era order, restoring regulation of ISPs to historical normalcy under Title I. In September of that year, the FCC reported the average download speed for fixed broadband in the US was 62.9mbps; upload speeds were in the low single-digits.²⁴³ By September 2022, Speedtest reported an average download of 172mbps and an average upload of more than 22mbps for American consumers.²⁴⁴

In 2019, Maine legislators overlooked this striking data and passed LD 1364, prohibiting ISPs to contract with the state unless they commit to abiding by the now-repealed 2015 FCC order.²⁴⁵

While wrong-headed on its face, the legislation also failed to take into account the undesirable situation of a patchwork of state internet rules within which providers must operate in order to interact with their customers for an agreed upon service.

Consumers lose when their choices are reduced, not only from a clear loss of options, but from competition among providers that allow for better services at lower prices. The market for internet access is no different.

A study by New York Law School summarized the landscape as such: “Data indicate that the vast majority of consumers are satisfied with their broadband connections and that, in general, the supply of bandwidth and the speeds of Internet connections are being shaped, in fact, by consumer demand and actual usage patterns.”²⁴⁶

Some argue that because access to the Web is a crucial aspect of participating in today's economy, it must be considered a public utility and regulated as such. While they are partially correct, regulating ISPs with a heavy hand leads to more consolidation, less competition, and less satisfied consumers. Trusting consumers to choose the best option for their needs will provide the appropriate data with which to judge the true scope and scale of the issue of connectivity in Maine. Policymakers must better understand the differences between access and affordability.

Policymakers should be attempting to assess to what extent the problem they see is related to access versus what can be attributed to affordability. Shouldn't the state and localities aid the consumers out there who are truly underserved before deploying a duplicative and expensive fiber network? Infrastructure projects should provide access where there is no service or insufficient local competition first, if at all, but the last thing we should do is allow them to be run by quasi-public entities.

If affordability is at least part of the issue, why are state funds directed solely to building infrastructure? By throwing tax dollars at miles and miles of costly fiber optic cable for minimal additional customers served, the state distorts the market in favor of subsidized service providers, driving potential private-sector competitors away. This ultimately hurts consumers by limiting choice and hurts taxpayers by putting them on the hook for funding a failing service.

So, why not use this money to provide vouchers to folks struggling to pay for sufficiently fast internet speeds? In addition to being a direct benefit to the consumer, they could be an incentive for the private companies to expand service into rural areas to better meet demand—as well as a far better use of public resources.

Consumers would have much more say in how their service is provided, since they would be directing their funds. From there, gathering a more particularized view of which households are

struggling with affordability, state agencies can be more focused on collecting and reporting that data to determine in which areas assistance is most needed.

We are at the precipice of great leaps in technological innovation concerning the delivery of internet service like 5G, small cells, TV white space, and more. Private innovation should be allowed to flourish under a light-touch policy. Leave regulation of broadband to the proper authority at the Federal Trade Commission, not as a public utility under the FCC. History and data show that consumers will benefit overall.

This solution has the potential to be simpler and cheaper to administer in the long-run than the convoluted state grantmaking process and the creation of wasteful and unaccountable GONs or BUDs. Vouchers are also technology-neutral, leaving room for other, possibly cheaper and better options for consumers. Lawmakers should give Mainers the power to choose the best internet service option for their needs.

Recommendations

- Repeal state-level “Net Neutrality” regulations.
- Reject efforts to limit market forces in the delivery of internet service.
- Support consumer affordability and satisfaction with direct vouchers for needy residents.

Reforming Maine's Complex System of Occupational Licensing



The Problem

State laws pertaining to occupational licensing have become increasingly burdensome over the last few decades, reducing employment and entrepreneurial opportunities for many—especially low-income—Mainers. According to a recent study by the Institute for Justice, Maine licenses 45 out of 102 low- to moderate-income professions.²⁴⁷ These include makeup artists, teachers, funeral attendants, auctioneers, and sign language interpreters, among many others. Those seeking to enter these occupations must, on average, pay \$181 in fees, devote 298 days to training, and pass one exam just to obtain a license to work in Maine.

Analysis

Physicians and lawyers must obtain a license before plying their trade; psychologists and dentists must do the same. Few people realize, however, the breadth of government regulation in the area of occupational licensing.

A 2007 study found that Maine licenses 134 professions and more than 20% of the state's workforce is licensed, representing more than 100,000 professionals. Nationwide, the proportion of the workforce needing to obtain a license has nearly quintupled since the 1950s, as state legislatures around the country have expanded the number of industries under government control.²⁴⁸ Until 1985, for example, dietetic technicians were free to work in Maine without a license.²⁴⁹

The argument in favor of licensing has always been that it protects the public from incompetent charlatans. By passing strict entry requirements, proponents argue, the government ensures that workers are well-trained and consumers are protected. However,

the overwhelming consensus of scholarly research is that—unless imposed with extraordinary parsimony and care—occupational licensing requirements deter people from entering the regulated profession, raise prices for goods and services on consumers, and do little to enhance public safety.²⁵⁰

The need to license any number of occupations defies common sense. Maine requires plumbers and electricians to be licensed, but not carpenters or painters. Geologists need to be licensed, but not biologists, chemists, or physicists. Barbers require longer, more expensive training than emergency medical technicians. In addition, Maine is virtually alone in regulating certain jobs. For instance, log scalers—who are responsible for estimating the value of logs—face no employment restrictions in any state except Maine and Idaho. Maine is also one of only two states to license dietetic technicians and electrical helpers.

In a report released in July 2015, the Department of the Treasury stated: “There is evidence that licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines. Too often, policymakers do not carefully weigh these costs and benefits when making decisions about whether or how to regulate a profession through licensing.”

Licensing requirements are not harmful to everyone. Entrenched industries benefit greatly from keeping new practitioners out of the marketplace and suppressing competition. According to the Concise Encyclopedia of Economics, “it appears that every organized occupational group in America has tried at one time or another to acquire state licensure for its members.”²⁵¹ Licensing has more to do with imposing costly and time-consuming obstacles that limit competition than with ensuring competence or protecting public safety.

It is estimated that today Maine licenses more than 200 individual occupations at a cost of 29,206 jobs and \$276 million in annual economic output.²⁵² Researchers have also concluded that Maine’s licensing programs have resulted in a misallocation of resources of

approximately \$2.6 billion, or \$4,719 per Maine household.²⁵³ Unfortunately, rarely are regulatory alternatives to licensure examined by lawmakers and state regulators before new licensing regimes are established. As seen below, a number of less burdensome alternatives to licensure exist—such as market competition, inspections, bonding or insurance—and would achieve the same result as licensure without permanently locking workers out of meaningful employment opportunities. Streamlining the licensing process would make it easier for Mainers to obtain meaningful employment, as well as reduce the burden for skilled workers to bring their talents to Maine.



Source: Mackinac Center for Public Policy

Recommendations

- Undertake a comprehensive review of occupational licensing in Maine, repealing or reducing requirements that have not been shown to be necessary in protecting public safety.
- Remove “good character” clauses from licensing rules and statutes to allow individuals with past criminal convictions to reintegrate into society.
- Encourage employment and licensing reciprocity by enacting the Right to Earn a Living Act²⁵⁴ and the Universal Recognition Act.²⁵⁵

Establishing Right-to-Work

The Problem

Under current law, a private-sector employee in Maine may be required to pay union dues as a condition of employment, regardless of the employee's desire to join the union or experience any benefits derived from the union's activities. Based on data collected from other states, as many as 7,400 workers in Maine may opt out of compulsory union dues if given the freedom to do so.²⁵⁶

Analysis

Right-to-work laws prohibit requirements that employees join or pay dues to a union as a condition of employment. They empower workers to decide for themselves whether or not joining a union is a good investment. Under right-to-work laws, employees are still free to join a union if they like, but workers can't be fired for failing to do so.

To date, 28 states and Guam have adopted right-to-work legislation, and several more are likely to follow.²⁵⁷ Though the majority of southern and midwestern states have embraced the policy, not a single northeastern state has followed suit. In Maine, where union membership is 12.4%, down from 13.4% in 2000, repeated efforts to pass right-to-work have been defeated by vociferous union leaders.²⁵⁸

There is little doubt that forced unionization has a detrimental impact on Maine's economy. A 2014 report by the Competitive Enterprise Institute found that "the compelling preponderance of evidence suggests there is a substantial, significant, and positive relationship between economic growth in a state and the presence of a right-to-work law."²⁵⁹ A study published in 2013 by the Mackinac Center for Public Policy found that from 1947 through 2011, right-to-work laws increased average real personal income

growth, average annual population growth, and average annual employment growth in right-to-work states.²⁶⁰

Peter DelGreco, president of Maine & Company, an organization that seeks to attract new businesses, jobs, and investment to Maine, has said that “the universe of decision makers who prefer right-to-work states is larger than the universe of decision makers who prefer non-right-to-work states. When we take out the soundbites and the passion and look simply at the totals, becoming a right-to-work state will encourage more decision makers to look at Maine.”²⁶¹

Maine could become the first New England state to enact Right-To-Work legislation, giving us an important competitive advantage over our regional neighbors in business climate and job growth. If workers are actually benefiting from the unions that represent them, unions should not be worried about declines in membership as a result of enacting right-to-work legislation.

Recommendation

- Pass right-to-work legislation to protect employees’ rights.

Codifying the Janus Decision



The Problem

In 2018, the U.S. Supreme Court ruled in *Janus v. American Federation of State, County and Municipal Employees* that public employees cannot be compelled to pay agency fees, or so-called “fair share” fees, to a union as a condition of employment. Despite this action from our nation’s highest court four years ago, Maine law still violates the First Amendment rights of public employees. Current labor relations law for municipal, state, judicial, and University of Maine System employees does not recognize the decision and instead says public-sector employees can still be forced to make these unconstitutional payments to public unions.²⁶²

Analysis

While the Janus decision was a historic victory for First Amendment rights, many public workers are still unaware of how the ruling affects their employment and workplace. Under Janus, public workers can no longer be required to pay agency fees, or payments taken from a worker’s paycheck to compensate a labor union for its representational activities. Before Janus, these funds were deducted from workers’ paychecks even when they were not members of the union. The deduction also disregarded whether the worker felt the union was adequately representing his or her interests in the workplace.

In its ruling, the Supreme Court left little ambiguity about the constitutionality of agency fees. The ruling states: “The First Amendment is violated when money is taken from nonconsenting employees for a public-sector union; employees must choose to support the union before anything is taken from them. Accordingly, neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any

other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.”²⁶³

When *Janus* was decided, 27 states already granted the right-to-work without forced unionization, but the roughly 5 million workers in 23 states, including Maine, without right-to-work laws were still required to make payments to unions. Even after the ruling, many public employees may not know how to opt out of union membership or fear that withdrawing membership could negatively affect their employment through a reduction in salary or benefits under pressure from the union.

Since the decision, public-sector unions have been pulling tricks to retain members after a worker resigns from the union. In many unions, workers are allowed to withdraw membership only during a designated period in the year. Workers who have resigned outside of that window are still having dues deducted from their paychecks despite the high court’s ruling.

It is important that Maine law respects the First Amendment rights of all employees to unionize and collectively bargain for what is in their best interest. At the same time, it is equally as important to respect the First Amendment rights of public employees who wish to disassociate with a union by opting out of membership or refusing to join in the first place. If affirmative consent has not been given after the *Janus* decision, or has been withdrawn, unions should immediately cease collecting all payments from public workers.

Because of *Janus*, workers now have a real choice—one that actually respects their First Amendment rights—and can no longer be compelled to financially support a union. It’s time for Maine law to accurately reflect the high court’s decision.

Recommendation

- Conform Maine labor relations law to the Supreme Court's decision in *Janus v. AFSCME* by eliminating the requirement for public employees to pay fees to labor unions as a condition of employment.

Giving Public Sector Union Members a Choice



The Problem

Current law in Maine allows public unions to negotiate in secret, demand paid time off for union activities, and maintain their representative authority even when they lack majority support among their members.

Analysis

Reforming public sector unions is critical to enhancing transparency, reducing government spending, and protecting workers' rights. Lawmakers in Maine have many opportunities to improve fairness and accountability among public-sector unions.

According to a 2015 report, Maine is one of just 11 states that allow government unions to negotiate in secret.²⁶⁴ Transparency in collective bargaining allows the public, the media, and elected officials to know precisely what union officials are demanding and what public officials are offering in any negotiation over employment terms and conditions.

Taxpayers should be able to attend collective bargaining negotiations to ensure that the public's interest is being represented. Government employees, city managers, and elected officials work for the public; the public is entitled to know what their employees are doing on their dime.

One common provision in collective bargaining agreements guarantees "release time," during which public employees perform union business—like contract negotiations, attending union meetings, and defending members at disciplinary hearings—at taxpayer expense. For instance, the Maine State Employee

Association—which represents more than 13,000 workers—is allowed to organize up to four one-day meetings of its Board of Directors per year without loss of pay or benefits, at a cost of at least \$15,000 to taxpayers.

Release time is no more than a taxpayer-funded subsidy to government unions, with taxpayers receiving nothing in return. While public employees should not be prohibited from freely associating outside of their employment duties, this should occur at employee, not taxpayer, expense.

Automatic dues deduction—in which public employers collect dues payments directly from employees' paychecks and pass them on to the union—is another provision that is commonly found in public collective bargaining agreements in Maine. These arrangements use taxpayer-funded resources to the exclusive benefits of unions. Legislators should require unions to use their own resources to collect dues from their members.

As Greg Mourad, vice president of the National Right to Work Committee, explains: “Once their employer ceases taking their union dues out of their paychecks at taxpayers’ expense, and they have to take active measures to continue bankrolling the union, public employee union members often decide the organization does not merit their financial support.”²⁶⁵

As a result of the Supreme Court’s decision in *Janus v. American Federation of State, County and Municipal Employees*, public employees cannot be compelled to pay dues or fees to a union as a condition of employment, and unions must obtain “clear and compelling evidence” that a worker agrees to pay before any payments can be deducted from their paycheck.

Since automatic dues deduction exists in Maine, the onus falls on state and municipal governments to ensure a worker affirmatively consents to pay dues and fees to a union. Thus, it is incumbent upon state and municipal governments in Maine to establish an opt-in system, similar to that adopted in Alaska, to protect the First Amendment rights of public employees.²⁶⁶

Maine also lacks recertification requirements for public unions. As research by The Heritage Foundation has shown, the vast majority of public employees never had a chance to vote for the union that represents them and claims part of their paycheck.

Often, once a government union organizes a public employer, it remains the exclusive representative of the workforce indefinitely, regardless of its members' views. Recertification requirements protect workers' rights and ensure that union leaders focus their efforts on reforms that tangibly help their members.

Maine can also end the “free rider” argument created by unions by ending exclusive representation provisions in collective bargaining agreements. Exclusive representation prevents employees who are not members of the union from representing themselves in negotiations with their employer. Unions say that workers who withdraw membership and do not pay dues or fees to unions are “free riders” of union services, but unions are the party in these negotiations who write exclusive representation provisions into collective bargaining agreements.

Recommendations

- Open public-sector collective-bargaining negotiations to the public.
- Prohibit “release time” provisions in union agreements.
- Prevent municipal, county, and state governments from automatically collecting dues on unions' behalf; unions should use their own resources to raise revenue and manage activities.
- Require state and municipal governments to establish an opt-in system to protect the First Amendment rights of public employees under the Janus decision.
- Require that unions obtain biennial recertification by earning the support of the majority of their members.
- End exclusive representation provisions in collective bargaining agreements.

Fixing Maine's Minimum Wage



The Problem

In 2016, Maine voters passed a minimum wage ballot initiative that has hurt small businesses and Maine's lowest wage earners. The measure incrementally raised Maine's minimum wage to \$12 an hour by 2020 and indexed future wage increases to inflation. As of January, 2023, Maine's minimum wage is \$13.80 per hour.²⁶⁷ It also removed the tip credit for food service workers, which was later reinstated by the 128th Legislature. As a result, steps must be taken to make Maine's minimum wage law workable for small businesses and low-wage earners.

Analysis

In 2017, researchers at the University of Washington used detailed employment data provided by the state government to study the economic impact of Seattle's minimum wage increase. The study concluded that when Seattle's minimum wage increased to \$13 an hour in 2016, the city's lowest-wage workers saw their hours decrease by 9%, leading to a net loss in earnings of \$125 per month, or \$1,500 less per year.²⁶⁸

According to the Bureau of Labor Statistics, in 2021, only 1.3% of Maine workers were paid at hourly rates at or below the minimum wage.²⁶⁹ When wages rise artificially due to an increase in the minimum wage, payroll costs on businesses increase without compensation for growth in productivity or sales. With a majority of businesses operating on razor-thin profit margins, Maine's minimum wage increase gives many small businesses no choice but to reduce their operations, raise prices, lay off workers, transition to automation, or relocate to another state.

When minimum wage hikes drive businesses to reduce costs, the first victims are low-wage, low-skill workers—the same workers

that minimum wage laws are intended to support. Despite calls by dozens of small businesses to slow the state's scheduled minimum wage increases,²⁷⁰ the Maine Legislature has continued to deny modifications to the law at the behest of the special interest groups that organized for the 2016 measure to appear on the ballot.

Sandra Fickett, owner of Tilton's Market in Buckfield, testified before the Labor, Commerce, Research and Economic Development Committee in 2018 that "most of the wage increases have not gone to my experienced staff, who have families to support," and requested that legislators implement a training wage for young workers to master necessary and fundamental job skills before a business is required to pay them the full minimum wage.

Sammie H. Angel, owner of the Front Porch Café in Dixfield, closed her doors in November 2016 and called the passage of the minimum wage ballot initiative "the last nail in our coffin." Like many other small business owners in Maine, Angel was unable to afford labor cost increases without increasing prices or compromising the quality of her service, and soon found herself out of business.

Amid record inflation, lawmakers must ease the pain on employers by rolling back the mandated minimum wage to previous levels or halting its annual creases.

Recommendations

- Repeal or reduce Maine's minimum wage.
- Eliminate the law's indexing to inflation.
- Enact a training wage for youth workers.

Ending the Prevailing Wage

The Problem

As a result of the federal Davis–Bacon Act of 1931, a total of 29 states—including Maine—have enacted state-level prevailing wage laws,²⁷¹ which are proven to inflate the cost of state-funded construction projects, thus wasting valuable public resources.

Analysis

The Davis–Bacon Act requires construction contractors and subcontractors to pay the local prevailing wage to workers when performing their trade on federally funded contracts. At the state level, the prevailing wage is the wage paid to laborers in public works construction projects led by state agencies.

Maine defines its prevailing wage as “the hourly wage and benefits paid to the median number of workers employed in a trade or occupation” on projects with value exceeding \$50,000. The state determines the prevailing wage by administering an annual survey conducted by the Maine Bureau of Labor Standards.

Every September, the bureau surveys the wages and benefits paid to laborers in construction-related trades to determine the prevailing wage in each county.²⁷² In the First Session of the 129th Legislature, lawmakers approved a bill that significantly increased fines for Maine workers who fail to respond to surveys administered by the bureau.²⁷³ According to the Maine Department of Labor, there are approximately 90 construction-related jobs for which the state pays the prevailing wage.²⁷⁴

The Davis–Bacon Act’s original intent was to prevent contractors from paying reduced wages to minority workers during the Great Depression. Given the numerous worker protections that exist today, many have questioned the usefulness of the prevailing wage

and assert it is obsolete. In a 1979 report issued to Congress, the federal Government Accountability Office (GAO) recommended repealing the Davis–Bacon Act because:

“(1) there have been significant changes in the economy... which we believe make continuation of the act unnecessary, (2) after nearly 50 years, the Department of Labor has yet to develop an effective program to issue and maintain accurate wage determination, and it may be impractical to ever do so, and (3) the act is inflationary and results in unnecessary construction and administrative costs of several hundred million dollars annually.”²⁷⁵

Prevailing wage laws effectively force taxpayers to subsidize the bloated compensation of politically influential construction unions. A 2017 report by the Empire Center for Public Policy found that New York’s prevailing wage law increases labor costs on public projects by 72% statewide and inflates the total cost of public projects by 13 to 25%.²⁷⁶ It also found that because prevailing wage laws incorporate benefits, costly fringe benefits offered by unions can approach or exceed the cost of hourly pay.

Since 2015, five states—Arkansas, Indiana, Kentucky, Michigan, and West Virginia—have repealed their prevailing wage laws. New Hampshire ended its prevailing wage in 1985. It’s time for Maine to do the same.

Recommendations

- Repeal Maine’s prevailing wage law.
- Reduce fringe benefits for prevailing wage workers.
- Reduce or eliminate fines for failing to respond to prevailing wage surveys.

Ending Maine's Archaic 'Blue Laws'



The Problem

Statutes that limit commercial activities on Sunday—so-called “blue laws”—are common in Maine. They interfere with the free market by unfairly restricting businesses’ ability to generate revenue and denying consumers the opportunity to shop. In the 21st century, vestiges of our strict religious heritage, however valid when guiding personal behavior, should not dictate public policymaking.

Analysis

Maine law prohibits businesses from opening to the public on Sunday except for works of necessity, emergency, or charity, or between the hours of 12 p.m. and 5 p.m. from Thanksgiving to Christmas during the holiday shopping season.

Over the years, however, a litany of exceptions have been passed to allow restaurants, bowling alleys, movie theaters, pharmacies, and many other businesses to stay open on Sunday.

Importantly, car dealerships are not among the exceptions to the Sunday prohibition. Selling a vehicle on Sunday is a Class E crime, punishable by up to six months in jail and a \$1,000 fine per violation. This law is onerous to those who work Monday through Friday and have only the weekend to evaluate or purchase a new car, as well as to dealerships seeking to broaden narrow profit margins.

It hasn’t always been this way; according to the *Portland Press Herald*, “Conducting retail business on Sunday had been almost routine behavior for a long time until about 1960,” when penalties for doing so were substantially increased.²⁷⁷

Blue laws also affect large supermarkets and department stores, which are required to close on Thanksgiving, Easter, and Christmas. Maine is still one of only three states in the country to impose such restrictions.²⁷⁸

In 2015, a proposal—LD 855—was introduced to relax Sunday closing requirements for stores with fewer than 10,000 square feet of interior customer selling space (for comparison, a typical chain drugstore has about 11,000 square feet of selling space), while prohibiting businesses from compelling their employees to work on Sunday.

“This bill [is] an opportunity for workers to pick up additional shifts voluntarily if they prefer or choose to work on Sundays. This could be a good opportunity for youth especially. This also provides more convenient access to grocery stores by residents,” said Julie Rabinowitz, then-director of communications and operations at the Maine Department of Labor. Ultimately, consumer demand should justify whether or not a store will open.

State law in Maine also allows municipalities to restrict the sale of wine, malt liquor, or spirits on Sunday by local referendum, an option that several dozen towns have used to deny businesses the opportunity to operate, abridging the personal freedoms of their residents.

In September 2015, organizers of the Great North Music and Arts Festival in Norridgewock were surprised to learn that on-site alcohol consumption was prohibited, and had to cancel one of their events. “Officials in some of the towns say updating the laws would help business, but they have persisted the way they are for decades,” the *Kennebec Journal* reported.²⁷⁹

Maine’s Blue Laws also prohibits hunting on Sundays, which has no basis in science or conservation. Following the passage of Maine’s Right to Food Amendment, a lawsuit has been filed against the Maine Department of Inland Fisheries and Wildlife challenging this law’s constitutionality, arguing that it has been “superseded” by the

recent amendment.²⁸⁰ Aaron Frey, the state Attorney General has asked for the case to be dismissed.²⁸¹ Although the lawsuit is still pending, it sheds light on the growing sentiment among Mainers that such Blue Laws are no longer a necessary or appropriate part of the state's legal code.

Recommendations

- Allow automobile dealerships to open on Sunday.
- Relax alcohol sale restrictions on Sunday.
- Allow all retail stores to open on Thanksgiving, Easter, and Christmas.
- Allow Mainers to hunt on Sunday.

Lowering the Cost of Child Care



The Problem

For many families with young children, especially single-parent households, child care is critical to being able to work and earn a living. Yet despite its importance, the cost of child care is often prohibitive for low-income Mainers.

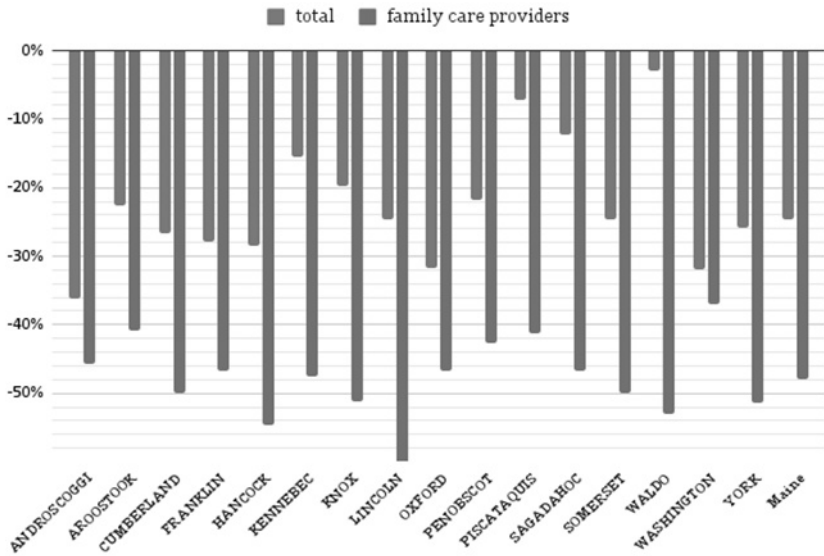
Analysis

According to the Maine Department of Health and Human Services' 2018 Child Care Market Rate Survey, the cost of care at a child care center ranged from over \$5,000 per year for school-aged children to more than \$11,000 for infants. The average annual cost of center-based care in Maine exceeds the average cost of a year's tuition at one of the state's four-year public universities, as it does in 41 other states and the District of Columbia.

Child care shortages have been felt across the state for several years, limiting access for working parents and driving up the cost of care. Despite millions of dollars doled out by Gov. Mills and the legislature, this problem has gotten even worse in the post-pandemic era.

Since 2008, each county in Maine has experienced significant losses in the total number of licensed providers, particularly in family child care. By 2021, all but one county in Maine had lost more than 40% of their family child care providers, and seven counties had lost half or more.²⁸²

Decline in licensed Maine child care providers, 2008 to 2021



As a Freeport daycare owner testified in 2016: “As more and more daycare regulations are passed, more and more great home daycares are closing, because it is becoming almost impossible to comply with all the rules and regulations.”²⁸³

As noted by the *Washington Examiner*, “excessive regulation of daycare and preschool mostly hurts the poor and working class. For one thing, it makes daycare rarer and more expensive.”²⁸⁴ A paper by the RAND Corporation concluded, unsurprisingly, that “regulations have an economically significant effect on the price of childcare, which in turn affects both the demand of regulated care and the labor force participation choices of the mothers.”²⁸⁵

Intuitively, strict regulations on child care providers may seem necessary to ensure the safety of vulnerable children and promote high-quality services that spur cognitive, emotional, and social development. Yet, according to a report by the National Center for Policy Analysis, “state and local regulations significantly affect the price of care without improving quality.”²⁸⁶

A 2015 study by the Mercatus Center determined that policymakers often focus their regulatory efforts on structural, easily-observable

aspects of child care—such as group sizes, zoning restrictions, and program administration—despite evidence that developmental outcomes are more closely linked to the quality of the interactions between the caregiver and the child.

In Maine, there are about 200 pages of regulations which apply to child care facilities, nursery schools, and family child care providers.

Depending on the type of provider and the age of the children being cared for, the Department of Health and Human Services imposes strict staffing ratios. For instance, in a small child care facility (defined as a business that cares for 3 to 12 children under the age of 13), one staff member may not supervise more than 12 children over the age of five. Similarly, child care centers—facilities with more than 13 children—may not allow one staff member to care for more than four infants.²⁸⁷

Though it's important to ensure that children receive the attention and supervision they need, these staffing ratios not only increase labor costs, but notably have not been proven beneficial to child development, and are often more restrictive than those of other states.

Twenty-eight states, for instance, allow staff members to supervise more 5-to-13-year-olds than Maine.²⁸⁸ While Maine limits the number to 13 children per staff member, some states—like North Carolina and Florida—allow up to 25 children. A study by the General Accounting Office estimated that increasing strict child-to-staff ratios to allow for more children to be watched by fewer adults could lead to substantial cost reductions.²⁸⁹

Also costly are education requirements for lead teachers and other staff working in the child care industry. According to a report published in 2015, “requiring a lead teacher to hold at least a high school degree” causes “the cost of child care for four-year-olds” to increase anywhere between 22% and 44%. When controlling for center- and home-specific characteristics, traditional measures of

quality, including caregivers' level of formal education, were found to be statistically insignificant.²⁹⁰

The motivation for tightly regulating the child care market—a desire to protect the thousands of children who rely on commercial child care from neglect or abuse—is laudable. Yet, despite extensive government involvement, the overall quality of child care in Maine remains mediocre while prohibitive costs bar many low-income families from pursuing the professional and educational opportunities made possible through reliable access to child care. Reducing burdensome regulations would allow more entrepreneurs to enter the child care arena, ultimately leading to more affordable options for the families who need them most.

Recommendations

- Align the child-to-staff ratios allowed in Maine's child care facilities with national averages.
- Eliminate educational requirements for lead teachers and other staff that have not been demonstrated to improve service quality.
- Allow providers without certification to watch more children.
- Reduce the fees associated with obtaining a license to practice as a child care provider and extend the term of the license.
- Review existing rules and eliminate those not carefully tailored to mitigate legitimate health and safety risks.
- Prevent the creation of new rules and regulations that are not tailored to mitigate legitimate health and safety risks.

Repealing Maine's Vehicle Inspection Program



The Problem

While a concern for public safety should always be on legislators' minds, Maine's vehicle inspection program is outdated and unnecessary. Drivers spend an estimated \$16 million—and countless hours—getting their vehicles inspected each year, despite the absence of evidence that mandated inspections increase safety or reduce the number of accidents and injuries on our roads and highways.

Analysis

Maine passed its vehicle inspection law in 1930, a time when vehicles were far less reliable, and considerably more dangerous, than they are today. Proponents of Maine's vehicle inspection program assert these examinations are necessary to protect motorists and ensure cars are safe to drive on public roadways. However, driver error is actually the biggest cause of automobile accidents, while mechanical failures—which are what vehicle inspection programs are intended to prevent—account for as few as 2% of crashes.

A 2015 report from the federal Government Accountability Office (GAO) that reviewed six rigorous studies examining vehicle safety inspection programs found no statistically significant difference in crash rates, fatalities, or injuries between states with and without inspection programs.²⁹¹

Proponents of Maine's program also claim that inspections are necessary because the chemicals used on our roads in the winter exacerbate problems with rust and wear-out of exhaust, brakes, struts, and other vehicle components. Yet winter conditions haven't prevented Minnesota, North Dakota, or Connecticut—which receive

an average of nearly 50 inches of snow each year—from repealing their vehicle inspection programs. Research using crash statistics from these states has not shown an increase in vehicular accidents, injuries, or fatalities in the absence of an inspection requirement.

Owning a car opens doors of opportunity that are often beyond the reach of those reliant on public transit, especially in rural areas of the state where poverty is most acute. Reducing the costs of purchasing and maintaining a vehicle should be an important goal of policymakers seeking to alleviate poverty.

The inspection requirement has grown so burdensome for some Mainers that they have resorted to making their own inspection stickers. As reported by the *Portland Press Herald*, the State of Maine had to crack down on a Saco counterfeiter’s black market vehicle inspection operation in 2017.²⁹²

Seventeen states have repealed their inspection programs over the last few decades, including Utah in 2017, understanding that these inspections do not ensure safety and only offer a snapshot in time of a vehicle’s overall condition and performance. Continuation of Maine’s inspection program constitutes a burdensome regulation that disproportionately impacts low-income earners.

In March 2020, Governor Janet Mills extended expiration dates indefinitely on state driver’s licenses, IDs, vehicle registrations and inspection stickers during the Civil State of Emergency caused by the COVID-19 pandemic. Suspending vehicle inspections for several months amidst a pandemic further calls into question the merit of Maine’s vehicle inspection program. No data exists to suggest that motor vehicle accidents increased or that Maine drivers were less safe during the period of suspended inspections.

It is also worth noting that even in the absence of the personal vehicle inspection requirement, law enforcement officers would fully retain the power to pull over and ticket drivers operating dangerous vehicles, as doing so is a Class E crime under Maine State Law.²⁹³ Therefore, it is clear that eliminating mandatory inspections

would not jeopardize the safety on Maine's roads, but rather it would free drivers from the expensive and time-consuming annual inspection process

To maximize access to transportation and reduce unnecessary costs on drivers, lawmakers should repeal the requirement that personal cars pass a state inspection.

Recommendations

- Repeal the requirement that non-commercial vehicles pass a state inspection.
- Require inspections only every two or three years instead of annually.
- Remove inspection requirements for vehicles younger than 10 or 20 years old.
- Revise inspection guidelines to ensure that safety concerns are the only acceptable justification for failing a vehicle.
- Reduce the penalties for failing to inspect a vehicle.

Wholesale Regulatory Reform



The Problem

State government agencies adopt regulations to implement laws and orders crafted by legislatures and chief executives. Otherwise known as “red tape,” these rules affect all individuals, families, businesses, nonprofits, and other entities in nearly all aspects of life.

After each legislative session or gubernatorial term, new regulations are added on top of old ones, creating what academic research has called “regulatory overload,” which actually makes Americans less safe.²⁹⁴ Unfortunately, no formal process exists in Maine to regularly review, modify or eliminate obsolete, duplicative, ineffective or overly burdensome regulations.

Analysis

Few exhaustive reviews of Maine’s regulatory burden have been conducted in our 200 year history. In 2018, researchers from the Mercatus Center uploaded the 2018 Code of Maine Rules (CMR) into a platform called State RegData. State RegData is a tool that allows researchers to identify the industries that state regulation targets most by connecting text relevant to those industries with restrictive word counts.

Referred to as regulatory restrictions, the words and phrases “shall,” “must,” “may not,” “prohibited,” and “required” can signify legal constraints and obligations. State RegData sorted through the entire 2018 CMR, and according to the analysis, Maine is home to 113,862 regulatory restrictions. It would take an individual about 449 hours—or more than 11 weeks—to read the entire CMR, assuming the reader spends 40 hours per week reading at a rate of 300 words per minute.²⁹⁵

The industries targeted most by regulation in Maine are ambulatory healthcare services, food manufacturing, utilities, and chemical manufacturing, all of which are subject to more than 3,000 industry-relevant restrictions. The Mercatus Center’s analysis also revealed the top regulators in Maine to be the Department of Health and Human Services, the Department of Environmental Protection, the Department of Agriculture, Conservation and Forestry, and the Department of Professional and Financial Regulation.

The sections of the 2018 CMR associated with these departments contain more than 12,000 regulatory restrictions each, with DHHS topping the list at 22,820 restrictions. These findings suggest more work must be done to break down barriers that are impeding Maine residents from achieving prosperity.

Of course, not all regulation is meaningless. Some serve a legitimate purpose in keeping our workplaces safe and our air and water clean. The problem arises when so many rules are adopted that the complex web of requirements becomes impossible to comprehend. With such a large volume of regulations through which to wade, the chances are greater that regulation serving an important and effective purpose will fall through the cracks.

Regulatory reform is among the most powerful tools policymakers possess to boost long-term economic growth and job creation. Individuals and businesses must navigate these rules—in addition to federal regulations—in order to remain in compliance and earn a living in Maine.

According to a report by the Mercatus Center of George Mason University, excessive regulations are associated with increased rates of poverty and greater income inequality. In fact, it was estimated that, between 1997 and 2017, the state’s regulatory burden caused 21,340 people to fall below the poverty line and increased income inequality by 3.55%.²⁹⁶

As noted by James Broughel, senior research fellow at the Mercatus Center and adjunct professor of law at the Antonin Scalia Law School, other states are already beginning to understand the benefits of regulatory reform. Virginia recently signed a bipartisan bill into law that requires a 25% reduction in requirements from two specific agencies that regulate occupational licensing and criminal justice activities. Following the state's action, CNBC ranked Virginia as the fourth best state in the nation for doing business, citing its regulatory reform law as a major reason for its high ranking.²⁹⁷

To ease the burden on businesses and job creators, Maine should begin unraveling the red tape that has built up throughout state government, stifling economic growth and entrepreneurship with no benefit to our state.

Recommendations

- Adopt a Regulatory Reform Pilot Program to examine the necessity of existing regulations and eliminate those that are obsolete, duplicative or have not been demonstrated to protect public health and safety.
- Require the Department of Health and Human Services, the Department of Environmental Protection, the Department of Agriculture, Conservation and Forestry, and the Department of Professional and Financial Regulation to eliminate 25% of its regulations over a three-year period.
- Require that the majority of state agency regulations automatically sunset after five or ten years unless determined necessary and effective by way of a comprehensive internal review, to be reviewed again after another five to ten years.

Protecting Innovation within the 'Sharing Economy'



The Problem

The "sharing economy"—in which assets and services are shared between private individuals, typically by means of the Internet—allows people to connect and exchange in ways unimaginable a decade ago. In response, some policymakers have tried to impose taxes and regulations to stifle the sharing economy platforms and the innovation which drives them. Such policies reduce competition, raise prices on services, and decrease the social benefits that the sharing economy provides to society.

Analysis

The sharing economy illustrates the wonders of the free market. Companies such as Uber, Lyft, TaskRabbit, Instacart and others are delivering substantial consumer benefits. Fueled by people seeking flexibility and opportunity through part-time work, and made possible through unprecedented technological innovations, the sharing economy is challenging the status quo throughout the world.

At its core, the sharing economy allows for idle assets to be more fully utilized. It makes it easier for a household to rent out an empty house, room, or car.

The barriers to entry in the sharing economy are very low, which drives competition, reducing costs for consumers. Prices are further lowered because key business functions are outsourced to digital platforms, thus creating economies of scale. Anyone with a car, room, or free time can participate in the sharing economy. The opportunities are virtually unlimited for individuals to create their own micro-businesses to supplement, or in some cases even fully provide, their income.

In addition to greater affordability, the sharing economy provides consumers greater product and service variety. Tourists looking to stay in an area, for example, can choose between renting a family's spare bedroom, a private apartment, or a whole house. Similarly, Uber allows customers to select the type of vehicle and seat capacity they prefer.

Despite these benefits, heavy-handed government meddling could easily disrupt this valuable part of our economy. Opponents of the sharing economy—namely those in established industries whose profits have been lost to more innovative competitors—seek government intervention simply for protection against providing a service more people want.

Recommendations

- Protect the sharing economy by only adopting regulations that reduce barriers to entry, promote transparency and competition, and safeguard property rights.
- Prohibit municipalities in Maine from enacting moratoriums or ordinances that stifle the sharing economy.

Phasing Out the Personal Income Tax

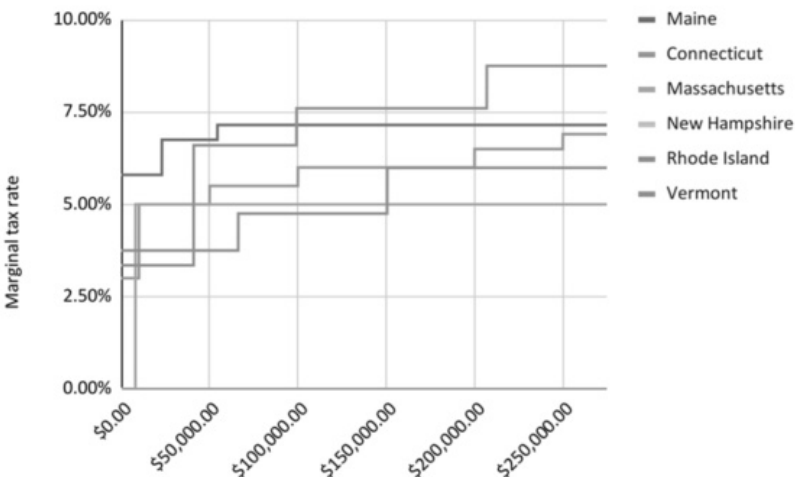
The Problem

Maine's personal income tax hampers economic growth, accelerates out-migration, and places us at a competitive disadvantage with other states by discouraging work and investment.

Analysis

Despite recent income tax reductions, Mainers continue to shoulder a large income tax burden. Maine's individual income tax system consists of three brackets with a top rate of 7.15%, according to The Tax Foundation, 10th highest among states that levy an individual income tax.²⁹⁸ Per capita state and local tax collections in Maine ranked 14th highest in 2021.²⁹⁹ Among New England states, Mainers are taxed the most on income earned up to \$100,000/year for a single filer. Vermont takes more at higher incomes, but Massachusetts' new 9% tax on income earned over \$1 million per year is the highest rate in the region.

Marginal Tax Rates by Income Level, New England States, 2022



Source: Dan Mitchell, Adept Economics

Eliminating the income tax would have a profound impact on Maine’s entrepreneurs and job creators, spurring private-sector investment and employment by returning hundreds of millions of dollars to where they are best spent—by individuals in their communities. In 2016, Tennessee fully eliminated its income tax, joining a growing number of states that have embraced low-tax policies. As wealth continues to flow from Maine to Florida and New Hampshire, lawmakers should realize that Maine’s high-tax climate is unsustainable.

Repealing the income tax would be particularly beneficial for Maine’s small businesses, which collectively make up 99% of all Maine businesses and support 57% of private-sector jobs.³⁰⁰ Many small businesses—including S-corporations, sole proprietorships, and partnerships—are “pass-through entities” which report revenues on their owners’ personal income tax return. In 2020, nearly 80,000 Maine tax returns reported S-corp or partnership income.³⁰¹ Repealing the income tax would empower job creators to use their savings to re-invest in their businesses and expand their operations.

A 2012 study by Arthur Laffer and Stephen Moore found that, in any ten-year period since 1960, states with no income tax consistently outperformed the highest income tax states (including Maine) on measures like population growth, personal income, Gross State Product, and employment. “The Northeast is falling further and further behind, and the South is booming. One of the biggest factors behind that phenomenon is that the South, on a whole variety of economic policy variables we have examined, is a region much more receptive to business and worker rights than the high tax, heavily unionized Northeast,” the report concluded.

In 2006, in an exhaustive report on Maine’s economic future, the Brookings Institution declared that “high overall burdens, the second-highest property taxes in the nation, and the state’s low thresholds for its very high personal income tax top rate all may well be sending negative signals to workers, entrepreneurs, and retirees about the state as a place in which to live and do business.”

Building on recent tax reductions, it's time to repeal the income tax entirely and send a message that Maine is truly open for business.

Recommendation

- Repeal the individual income tax.

Reducing Motor Vehicle Taxes & Fees



The Problem

Maine's high motor vehicle excise taxes and car fees are a burden on many, particularly low-income households. By limiting transportation options for low wage earners, these taxes make it harder for them to find and keep a job, access child care and educational opportunities, and engage in their communities.

Analysis

Unfortunately, Maine policymakers have enacted policies that make it harder for low-income individuals to purchase and operate a car. Maine's red-tape and regulations surrounding automobiles are yet another cost that drivers must overcome. An analysis in 2023 revealed that the average annual cost of operating a car in Maine—when insurance, repairs, and gasoline expenses were calculated—totaled \$4,400 in 2023.³⁰²

When purchasing a car privately or from a dealer, individuals must pay a 5.5% sales tax. If a person is buying a vehicle with a manufacturer's suggested retail price of \$20,000, the tax would be an astonishing \$1,100. If that vehicle cost \$30,000, the purchaser would pay \$1,650 in sales taxes. Many states have lower car taxes; New Hampshire levies no sales tax on automobiles.

The owner must also pay an annual municipal excise tax to register their vehicle. While this excise tax varies depending on the age of the vehicle, the tax burden is often high. If those \$20,000 and \$30,000 vehicles were made in 2019, the excise taxes on each would be \$480 and \$720, respectively. Even the excise tax on a \$20,000 car manufactured in 2005, a more realistic choice for a low-income family, would still be \$80.

The owner must also pay a fee—which is \$35 for passenger vehicles—when they go to register their car. If the car was purchased privately, they must also pay a \$35 title application fee. Many municipalities also charge an agent fee. Every year, an individual must re-register their car and pay another registration fee.

All told, the owner of a new \$20,000 vehicle would pay more than \$1,600 in fees and taxes the first year they purchased their car. The owner of a new \$30,000 car would pay more than \$2,400. By reducing these taxes and fees, policymakers can help to reduce the high costs of car ownership and promote the availability of transportation for those living in poverty.

Recommendations

- Reduce the Motor Vehicle Excise Tax rates.
- Require personal vehicles to be registered every two years for a fee of \$50.
- Allow municipalities to assess the excise tax based on the purchase price of the vehicle rather than the MSRP price.

Abolishing Sin Taxes



The Problem

Over the years, lawmakers have enacted several so-called “sin taxes” that seek to discourage certain behaviors, like drinking or smoking. While proponents argue that these taxes reduce habits that are harmful to public health, these policies are largely ineffective. In addition, sin taxes are notoriously regressive, imposing the highest burden on Maine’s poorest residents.

Analysis

In 2017, Maine collected \$475.1 million (5.3% of total tax revenues) in sin taxes on alcohol and tobacco products, as well as casino and video gaming activities.³⁰³ Liquor store taxes account for 1.8% of state revenue, the highest share of any state. Maine’s cigarette tax is currently \$2.00 per pack, the 24th highest in the country and 15% above the national average.³⁰⁴

There is little evidence that sin taxes are effective. According to the Mercatus Center, “research has shown that when the price of a ‘sinful’ good increases, consumers often substitute an equally “bad” [product] in its place.”³⁰⁵ For example, two studies found that teen marijuana consumption increased when states raised beer taxes or increased the minimum drinking age.

Another study found that smokers in high-tax states are more likely to smoke cigarettes that are longer and higher in tar and nicotine than smokers in low-tax states. Ultimately, as a report by the National Center for Policy Analysis summarized, “when prices for tobacco and alcohol products rise due to tax increases, demand for these products does not go down much. A few consumers will quit and many will substitute lower-cost brands, but most lower-income smokers and drinkers will continue to use tobacco and alcohol. Thus, raising taxes on these products makes the tax burden even more regressive.”³⁰⁶

A 2008 Gallup poll showed that about 30% of American adults earning less than \$36,000 per year smoked. By contrast, only 13% of those with incomes exceeding \$120,000 used tobacco products.³⁰⁷ A 2014 study confirmed that cigarette smoking is strongly associated with income and educational achievement.³⁰⁸

According to a 2012 survey, about 31% of smokers smoke one pack a day, while an additional 68% smoke less than one pack.³⁰⁹ In other words, nearly one-third of smokers in Maine—who are disproportionately low-income—face an annual expense of more than \$700 in sin taxes, while many more pay hundreds of dollars per year.

Unfortunately, Maine is moving in the wrong direction on sin taxes. In the First Session of the 129th Legislature, lawmakers approved a bill that equalized the tax on tobacco products consistent with the 43% tax on the wholesale price of cigarettes.³¹⁰ Legislators would be wise to eliminate this unnecessary, regressive form of taxation, instead of expanding it.

Recommendation

- Eliminate or reduce “sin taxes” on alcohol and tobacco.

Cutting the Sales Tax



The Problem

Maine's flat sales tax is highly regressive, imposing significant burdens on low-income taxpayers. It also puts Maine businesses—particularly those in border counties—at a competitive disadvantage with New Hampshire, which doesn't levy a general sales tax.

Analysis

Maine's sales tax disproportionately impacts low-income earners because, as a recent analysis by Pew Charitable Trusts noted in 2014, "low-income families spent a far greater share of their income on core needs, such as housing, transportation, and food, than did upper-income families."³¹¹ On average, the bottom 20% of Mainers paid 6.1% of their income in sales and excise taxes in 2018³¹²

Changes to the sales tax that took effect in January 2016 expanded the sales tax base by increasing the number of taxable services and food products. Although legislators also created a refundable income tax credit to provide sales tax relief to low-income families, it only results in a more convoluted tax code, is unlikely to fundamentally alter consumer behavior, and should be replaced by a lower tax rate. Broadening the tax base is an acceptable strategy only if paired with rate reductions that result in a lower overall tax burden.

Reducing Maine's sales tax would help reduce cross-border shopping and the distinct retail advantage New Hampshire now enjoys. In a 2011 report, Maine Policy Institute estimated that Maine lost \$2.2 billion in retail activity to New Hampshire in 2007, thanks in large part to our comparatively high sales tax burden.³¹³ The disparity exemplifies why adopting a local-option sales tax in

Maine would be a losing endeavor considering we border only one state, New Hampshire, which does not impose a sales tax.

The study also predicted that “lowering Maine’s sales and excise taxes would likely increase retail sales to the point where greater business performance would increase other tax collections, such as the individual and corporate income tax, which would more than offset the lower sales and excise tax revenue.”

Recommendations

- Eliminate or reduce Maine’s general sales tax rate.
- Prohibit municipalities from imposing a local-option sales tax.

Eliminating Maine's Estate Tax



The Problem

Maine's estate tax—commonly known as the “death tax”—is an unpredictable and diminishing revenue source that places a significant burden on family businesses and farms, especially multi-generational job creators in rural areas.

Analysis

After the death of a family member, a family is sometimes forced to either sell the business altogether or reduce capital equipment to pay the estate tax liability. Often this results in a residual impact in the loss of private sector jobs.

As noted in a recent study by The Heritage Foundation, “death taxes are self-defeating because they drive out businesses and high-income residents. Even for those choosing to remain in death tax states, the elderly are incentivized to spend down their assets while alive or to find tax shelters, which results in massive disinvestment in family-owned businesses—the backbone of local economies.”³¹⁴

The study confirms that “citizens whose estates are most likely to be partially confiscated at death are often moving elsewhere to escape taxation,” leading to a reduction in capital stock to spur local economic growth.

As a result, several states have repealed their estate tax since 2010, and Maine remains among the minority of states relying on this inefficient form of taxation. The estate tax is also highly volatile and generates relatively little revenue. Estate tax collections totaled \$11.7 million in 2017, \$13.8 million in 2018, and \$15.8 million in 2019.³¹⁵

In 2019, the estate tax accounted for only 0.4% of total state revenue.³¹⁶ Clearly, the estate tax's utility as a source of revenue does not justify its ancillary effects on the business environment and the hostile message it sends to many of Maine's residents.

Recommendations

- Repeal the estate tax entirely.
- Increase the exclusion amount applied to Maine properties from \$5.8 million to \$11 million per individual.

Providing Real Property Tax Relief



The Problem

Maine’s revenue sharing program was created in 1973 to redistribute state revenue to cities and towns across Maine. When it was created, the Legislature made clear that its purpose was to “stabilize the municipal property tax burden and to aid in financing all municipal services.” However, revenue sharing has failed to limit the growth of local property taxes. Since the program’s creation more than four decades ago, local property tax collections have roughly doubled in inflation-adjusted dollars, even as revenue sharing funds have consistently grown.

Analysis

Maine’s municipal revenue sharing program transfers a small percentage of tax collections from major broad-based taxes—including the income tax and sales tax—directly to municipalities in an effort to alleviate local property tax burdens and supplement municipal budgets. Despite these efforts, Maine per capita property tax collections ranks 16th highest in the country.³¹⁷

Currently, revenue sharing is designed to distribute a higher percentage of funds to municipalities with very high tax burdens.³¹⁸ Although the intent of the provision was clearly to allow high-tax cities and towns to reduce their property tax rates by providing state aid, municipalities have taken advantage of this feature of the program to raise local taxes and attract additional state funds.

Whenever money is raised at one level of government and spent at another, there is a loss of accountability to voters. State officials who determine the tax rates, on which revenue sharing funds rely, have no control over how localities spend the money. Similarly, municipal leaders aren’t accountable for revenues raised at the state level, and can complain that state funds are insufficient when

justifying local tax hikes to support irresponsible spending and unnecessary programs.

Reforming the revenue sharing program to incentivize sound municipal budget management is crucial if we are to put Maine on a sustainable fiscal path.

Recommendations

- Eliminate the revenue sharing program.
- Reform the revenue sharing formula to reward municipalities for lowering property taxes, instead of incentivizing excessive spending.

Gutting Corporate Welfare



The Problem

Economists have long criticized politicians' penchant for creating narrow legal carveouts and targeted tax exemptions to lure large corporations. Both economic theory and empirical evidence indicate that these incentives are ineffective ways of spurring economic development. Despite these findings, the government continues to pick winners and losers through tax policy when the elimination of corporate welfare could result in substantial savings for all Maine taxpayers.

Analysis

The scale of corporate welfare at the federal level is quite alarming. In 2012, the Cato Institute calculated that the federal government spends almost \$100 billion annually on corporate welfare. That's an average of \$870 for every American family.³¹⁹

It is confusing enough collecting data on federal agencies to come up with an aggregate figure, but, until recently, the task of doing so at lower levels of government was herculean. The web of state and local corporate welfare provisions was so tangled that quantifying their impact was nearly impossible.

However, thanks to a crucial rule change and a new database by Good Jobs First, we now have a glimpse into the financial effects of these cronyist policies. In August 2015, the Government Accounting Standards Board (GASB) issued Statement No. 77 which requires GASB-compliant state and local governments to report on revenues lost due to corporate tax breaks.

According to Good Jobs First, in 2019, companies in Maine received at least \$37,189,875 in various state and local tax breaks and other giveaways. (The actual figure is likely higher, since this estimate is

based on a limited review of state laws and only includes 24 municipalities.)³²⁰ and Since 1995, Maine has doled out nearly \$800 million in corporate welfare.³²¹

A recent study from the Mercatus Center at George Mason University uses this estimate to quantify the opportunity costs of corporate welfare for every state.³²² The table below shows the extent to which the elimination of corporate incentives in Maine would allow policymakers to lower corporate income taxes, personal income taxes, or sales taxes and still support general fund spending.

Possible Tax Reductions by Eliminating Corporate Welfare	
<u>Tax</u>	<u>Possible reduction</u>
Corporate Income	-25.3%
Personal Income	-2.7%
Sales	-3.0%
Total tax burden	-1.3%

Source: Mercatus Center, *The Opportunity Cost of Corporate Welfare*

Slashing Maine's corporate income tax by one-quarter for every business in Maine is far more likely to create jobs and promote economic growth than offering a small handful of corporations massive taxpayer-financed incentives with little oversight or accountability.

Recommendation

- Reduce or eliminate the tax credit and incentive programs offered through the Department of Economic and Community Development.

About the Authors

Nick Murray



Nick Murray is the director of policy at Maine Policy Institute. He is the author of numerous policy reports, testimony, op-eds, and blog posts on various issues including Ranked-Choice Voting, school choice, vehicle inspections, and the government's response to COVID-19. Nick is a rotating host of Inside Maine on WGAN and holds a degree in political science from the University of New Hampshire.

Jacob Posik



Jacob Posik is the director of communications at Maine Policy Institute. He first joined MPI as a policy analyst in 2017 and was the lead researcher on a number of projects, including Let Us Work, The Will of the People?, and Universal Chaos. Jacob holds a degree in political science from the University of Maine and a minor in Maine studies.

Matthew Gagnon



Matthew Gagnon is the chief executive officer at Maine Policy Institute. He has been a columnist for the Bangor Daily News since 2011, and hosts the WGAN Morning News every weekday from 6am to 9am on WGAN. Prior to joining MPI, Matt was director of digital strategy for the Republican Governors Association and deputy director of digital strategy at the National Republican Senatorial Committee. Matt holds a degree in political science from the University of Maine.

Mike Quatrano



Mike Quatrano is the director of civic engagement at Maine Policy Institute, working with grassroots activists and collaborating with state legislators to advance MPI's policy priorities. Prior to joining Maine Policy, Mike served as executive director of the Maine Republican Party, and as field director for the Republican National Committee and the Republican Governors Association.

Libby Palanza



Libby Palanza served as the Summer 2022 Policy Intern with Maine Policy Institute, and authored several policy briefs and blog posts on issues relating to regulations, economics, child care, and education, including *The Case for Charter School Reform*. Libby is an undergraduate at Harvard College studying government, anticipating graduation in Spring 2023.

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