

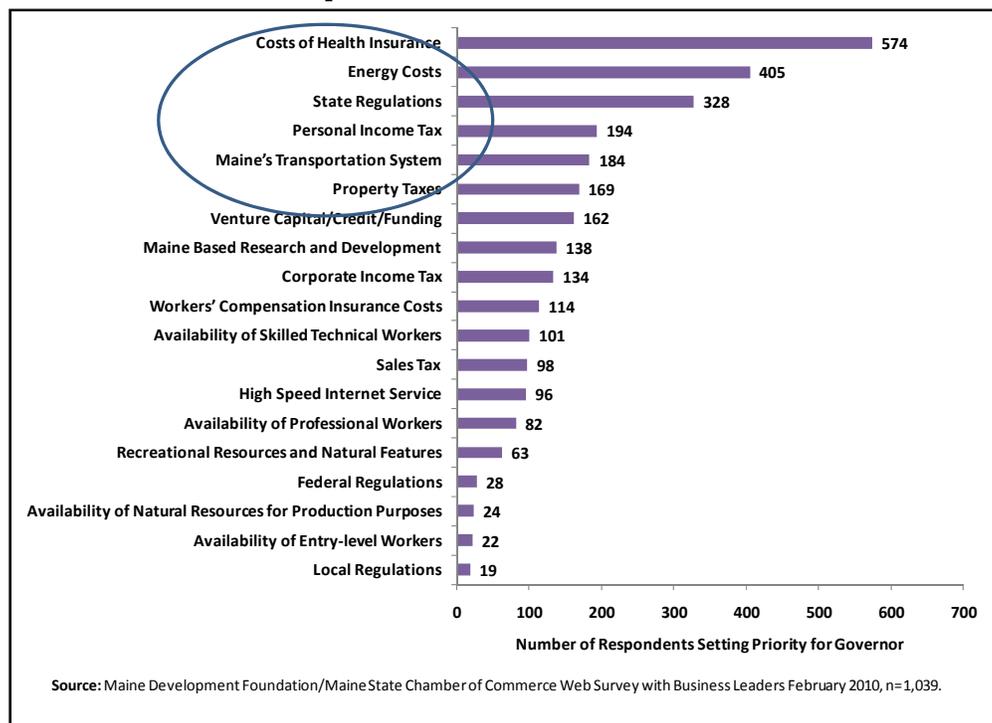
Regulatory Policy

“...for Maine to move forward on the road to prosperity, Maine’s regulatory agencies must reinvent themselves and how they interact with Maine businesses. Regulatory agencies and their employees must strive to provide a consistent, efficient and effective regulatory environment for businesses.” ... “It is not a matter of choosing between regulation and promotion. Regulations should be enacted, written, and enforced in a manner that achieves their intended goals while minimizing unnecessary and unproductive conflicts and redundancies for those impacted.”

Joint Select Committee on Future Maine Prosperity,
Time for Change, 2008

Most businesses agree that regulations are a necessary cost of doing business. Regulations help maintain our quality of life and a healthy economy. Regulations span a myriad of issues from labor practices to environmental quality. They exist at the local level, all the way up to the federal level. Because of the number of regulations, the range of issues and the layers of oversight, they pose a hurdle for businesses, particularly smaller ones with limited resources and professional staff.

MDF and Maine State Chamber Survey of Business Leaders, 2010 Top Priorities for Next Governor



As the chart on the previous page shows, the respondents to the Maine Development Foundation survey rated state regulations in the top three priorities for the next Governor. Much of the criticism regarding regulations does not originate from the content of the regulation but from the uncertainty and quickly changing regulatory landscape. It is not a simple task for anyone to learn all the regulations they must follow when considering investment.

It is made all the more difficult when information is not readily available, when that information changes, or when walking individuals and businesses through the process is beyond the scope and training of the regulators. This drives up costs, sometimes to a point where they outweigh the benefit of investment. Regulations serve a real purpose but cannot be an insurmountable hurdle to investment in Maine. Unfortunately, in this instance, perception is reality. If businesses believe that regulations are too burdensome or the process is too cumbersome, that belief itself may derail the investment process before it starts. An appropriate balance is needed for everyone's best interests.

Facts and Findings

In recent surveys of Maine businesses, regulatory burdens have been cited as being one of the greatest barriers to business investment and growth.

According to Critical Insights, [The Mindset of Mainers: Highlights from Recent Polling Efforts, February 2010:](#)

- Survey results show that government regulations have always been cited as being one of Maine's "Greatest Liabilities for Business" and the degree of liability has increased dramatically from 2003 – 2009

According to the Maine State Chamber's [Impact, February 2010:](#)

- Maine business leaders attending the Chamber's 2010 Leadership Summit listed regulations among their top issues of concern

According to the [Governor's Jobs Summit, February 2010:](#)

- Regulation was one of four major topic areas on which comment was received

Maine is predominantly a state of small businesses, which are more adversely affected by burdensome regulatory policies that apply to them.

According to the U.S. Small Business Administration Office of Advocacy's [Small Business Profile, October 2009:](#)

- In 2006, 97.4% of Maine's businesses were small (fewer than 500 employees), employing 60.6% of the private workforce in Maine

According to W. Mark Crain, The Impact of Regulatory Costs on Small Firms (SBA Report), September 2005:

- Small firms (< 20 employees) spend an average of \$7,647 per employee to comply with federal regulations while large firms (> 500 employees) spend an average of \$5,282 per employee

According to the Management Research and Planning Corporation U.S. Small Business Administration Office of Advocacy, Analysis of State Efforts to Mitigate Regulatory Burdens on Small Business, June 2002:

- Few states actively implement protections for small businesses against regulations and even fewer have meaningful programs genuinely benefitting the small business community
- Those states that are successful typically have independent bodies which review agency regulations to ensure agencies review impacts on small business and assess whether regulations impose an undue burden on small business

Without some degree of regulatory flexibility, policies and processes that are burdensome, lengthy, inconsistent, and frequently changing can undermine desirable growth and investment in the economy.

According to the U.S. Small Business Administration Office of Advocacy, State Guide to Regulatory Flexibility for Small Businesses, March 2007:

- Successful state regulatory flexibility is marked by 5 characteristics:
 - Defines small business in manner that is consistent with state practices and permitting authorities
 - Requires state agencies to conduct impact analyses before issuing regulations
 - Requires state agencies to examine less burdensome alternatives
 - Ensures judicial review of compliance with rulemaking procedures
 - Requires periodic review of existing regulations
- Since 2002, 19 states have implemented regulatory flexibility via Executive Order or legislation

According to the Management Research and Planning Corporation U.S. Small Business Administration Office of Advocacy, Analysis of State Efforts to Mitigate Regulatory Burdens on Small Business, June 2002:

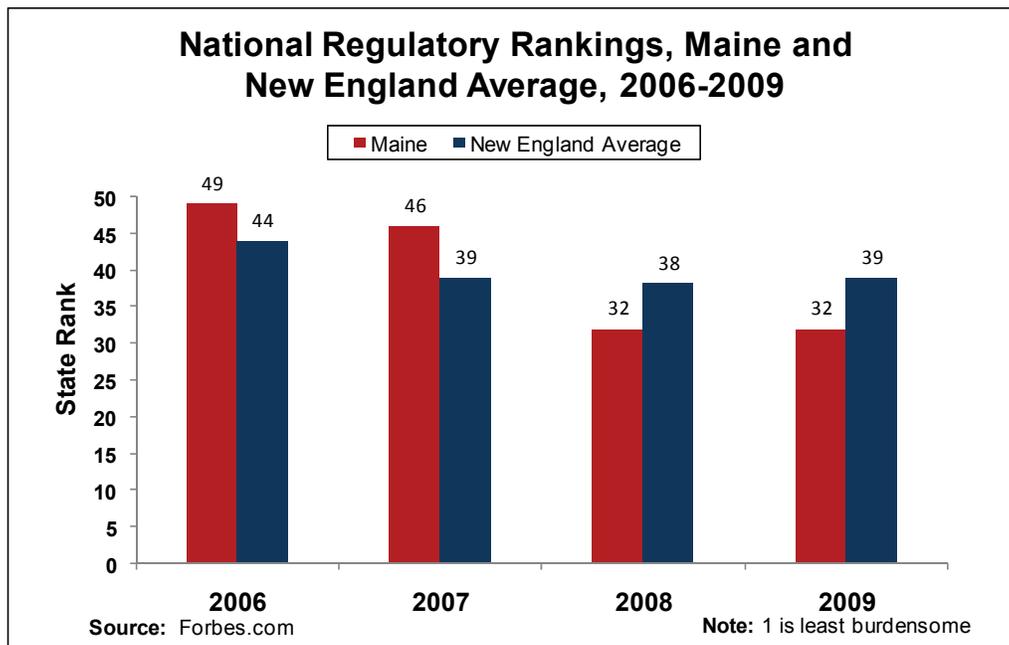
- Maine's statutory framework for addressing regulatory burdens on small business is unenforced and ineffective

However, Maine has taken steps to improve the regulatory process.

- The Maine Regulatory Fairness Board was created by the Legislature in 2005 to investigate regulatory and statutory changes to enhance Maine’s business climate
- LD 905, Maine Law to Reduce Small Business Regulatory Burden, amended the Administrative Procedure Act in 2007 to strengthen safeguards for small business by:
 - Directing regulating agencies to examine the impact of proposed regulations on small businesses and to examine less burdensome alternatives
 - Requiring agencies to make information public before hearing

According to the state ranking of regulatory environment, a component of Forbes Magazine’s The Best States for Business, September 2009 (chart below):

- Maine has improved from 49th in 2006, to 46th in 2007, to 32nd in both 2008 and 2009, with 1 being the least burdensome



Survey Says

MDF worked in partnership with several Maine trade and professional associations to distribute a survey to their members to understand their experiences with investment and policy issues in the state. 1,039 business leaders responded to the survey. The following is a summary of responses concerning regulatory policy and process.

Regulatory policy and process are one of the most pressing issues for Maine businesses and organizations. Survey respondents ranked state regulations among the top three priorities for the next Governor and Legislature, following the Cost of Health Insurance and Energy Costs.

- Respondents ranked state regulations as having the third most negative influence on their investment decisions
- Out of 19 issues, state regulations ranked as the third most important issue facing the next Governor and Legislature

Follow-up interviews revealed more about Maine businesses' view of the state's regulatory and business climate.

- There is a real divide between the business community and political bodies. Advocates and politicians paint businesses as “bad” and ill-intended. Businesses consider politicians and government officials as naïve or ill-informed. The tension has grown to the point where it is negatively impacting business investment and economic growth
- There is a perception among businesses that regulatory bodies have an anti-business bias, and regulations and the regulatory process are the tools they use to constrain business activity
- Businesses and political powers need to push through these issues to establish a more collaborative approach or economic growth will continue to stall in the state

Experts Recommend

The following is a summary of key recommendations from various reports, committees and efforts concerning regulatory policy and process.

Joint Select Committee on Future Maine Prosperity, Time for Change, 2008:

- The Governor should direct all state regulatory agencies to reinvent themselves and how they work with Maine businesses
- Regulatory agencies must strive to be efficient, consistent and effective and improve relationships with the business community
- Regulations should be administered in a manner that achieves intended goals while minimizing costs and conflicts
- The Maine Legislature's Business, Research and Economic Development (BRED) Committee should regularly share findings of the Maine Regulatory Fairness Board with the Governor

Maine Regulatory Fairness Board, 2009 Annual Report:

- Create an Office of Regulatory Streamlining providing new businesses with a single point of contact and serving as an information clearinghouse for regulatory issues
- Pass LD 1608 – which establishes an Independent Office of Administrative Law Judges autonomous from licensing boards to decide agency enforcement actions

- Create efficiencies in the siting approval processes, both state and local, making the process clearer (more consistency in regulations) and shorter

Management Research and Planning Corporation U.S. Small Business Administration Office of Advocacy, Analysis of State Efforts to Mitigate Regulatory Burdens on Small Business, June 2002:

- Independent review bodies are essential to limiting regulatory impact on small business
- Actual institutional processes established through legislation and/or executive order are needed to make reform last
- Governors and agencies need to make consistent enforcement of laws a high priority

Proceedings of the Governor's Jobs Summit, February 2010:

- Review use of Department of Environmental Protection permit by rule with the goal of expanding it to additional, appropriate business activities
- Department of Economic and Community Development (DECD) should designate a point person to facilitate business interactions with state agencies

Investment Imperatives

Regulations serve a real and valuable purpose in our lives and our economy, but they were never intended to discourage good investment and development that benefits Maine. Addressing the regulatory environment has been a promise of multiple Governors and Legislatures but little has changed in recent years. The next Governor and Legislature need to not only make this a priority but also to lead by example, set expectations and follow through on the implementation.

Recommendations

Provide more information and assistance to businesses navigating the regulatory environment

- Continue and expand DECD's mission and capacity in facilitating business interactions with state agencies on regulatory matters, actively walking the business through the process
- DECD should be a liaison to the Maine Municipal Association and businesses on issues of local regulations

Improve the often contentious relationship between regulatory bodies and business

- The attitude of regulatory bodies should be one of helping business to meet appropriate requirements so they can succeed and continue to make positive contributions to Maine, rather than utilizing regulation to stymie business activity

Establish the regulatory environment as a priority issue with Executive and Legislative leadership and hold all parties accountable for improvement

- Establish, make public, and consistently enforce timelines for decision making
- Strengthen the authority of the Regulatory Fairness Board and expand its role to include data collection and analysis
- Create positions for small business advocate and regulatory ombudsman in the Public Advocate Office or at DECD

Streamline the regulatory framework to ensure expedience, clarity, and consistency

- Use the Maine DEP's permit by rule model for other regulatory processes
- Identify and explore ways to reduce redundancies and inconsistencies between different levels of government while maintaining strength of overall regulations