

**Statement by Angus S. King, Jr., U.S. Senator**  
**Before the U.S. Senate Committee on Homeland Security and Government Affairs**  
**Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce**  
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**2:30 PM**

Chairman Tester, Ranking Member Portman, and members of the subcommittee, thank you for the invitation to testify today on the topic of improving regulatory processes.

Let me state very clearly from the beginning that I am not anti-regulation. Regulation is an essential function of our government and is critical to protecting the things our society values, like the environment, public health, and safety. However, I am opposed to senseless regulation – those rules that do not serve a greater public purpose and are burdensome or impede our ability to compete with the rest of the world.

In my testimony today I would like to accomplish three goals: 1) Give you a brief sense of my professional background on these issues and the various roles I have held that have informed my approach to regulatory reform; 2) Outline a few broad principles that govern my thinking about the role of regulation in society; and 3) Discuss two specific challenges we face in this space and point to potential legislative remedies.

**Background**

As I am offering my personal views on the state of regulation in the United States, let me first provide you all with a brief synopsis of my professional background, which has deeply informed my current thinking.

I was trained as an attorney, and after law school I moved to rural Maine to provide legal services to low-income people. In the early 1970s, I spent an interval in Washington, DC as chief counsel to the U.S. Senate Subcommittee on Alcohol and Narcotics in the office of former Maine Senator William Hathaway. In 1975, I returned to Maine to practice law in Brunswick. During the mid-70s, I served as the lobbyist for the Natural Resources Council of Maine and the Audubon Society at the Maine Legislature. In the early 1980s, I became in-house counsel for an energy development company that built small hydroelectric and biomass plants. A few years later, I founded Northeast Energy Management, Inc., which developed large-scale energy conservation initiatives at commercial and industrial facilities in Maine.

In 1994, I was elected Maine's 71st Governor. During my two terms in Augusta, I focused on economic development, job creation, and reforms in education, mental health services, land conservation, and environmental protection.

In the ten years that followed my time in public office, I was involved in a number of different pursuits, including serving on the board of a small community bank and teaching a course on leadership at Bowdoin and Bates Colleges.

I recount this background not to recite my credentials but instead to give you a sense of the many angles from which I have viewed the regulatory process. These different perspectives have necessarily shaped my thinking on these topics and have placed me somewhat outside the mainstream in considering potential solutions to our current challenges.

### **Regulatory Principles**

The accumulation of these professional experiences has led me to develop several guiding principles that I like to discuss when I am asked about my philosophy on improving regulation. What follows are a few of these principles.

First, we live in a competitive world, and we are in constant competition with companies and people who want our jobs. Many of these companies are located in places that may not share our same tradition of environmental protection, which can make this competition structurally unequal. I raise this point because we must remember that while we need to be vigilant to protect public interests through regulation, we should not make the mistake of believing we are regulating in a vacuum. Since 2000, we have lost 32% of our manufacturing jobs; over that same time period, over 42,000 factories closed. There are numerous reasons for this decline, but our domestic regulatory policy is one of the many factors that impact our global competitiveness. We ignore this link at our own peril.

Second, regulations have a cost – and not all regulations are created equal. As I mentioned earlier, after my time as governor, I served on the board of a small community bank in Maine. During that time, I saw the first-hand effects of the new Dodd-Frank regulation of the mortgage business – and frankly, the impact on these small banks has been devastating. The Bangor Savings Bank did not cause the financial crisis; why are we regulating it as though it did? To avoid situations like this, regulations must be carefully calibrated and scale-appropriate. I know that the OMB's Office of Information and Regulatory Affairs (OIRA) is trying to do this in its review of economically significant regulations – and I am glad to know that Administrator Shelanski is here today to talk about the work his folks are doing to make sure that these regulations are properly vetted.

To this point, numerous studies have been conducted to compare the cost per life saved of various federal regulations. For example, the unvented space heater ban, created in 1980, has an estimated cost of \$100,000 per life saved.<sup>1</sup> Is a life worth \$100,000? I think most people would agree that it is. As you move further down the list, the calculations shift considerably. Take

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<sup>1</sup> "Measures of Mortality Risks," by W. Kip Viscusi, Jahn K. Hakes, and Alan Carlin, *Journal of Risk and Uncertainty* Volume 14 (1997).

OSHA's occupational exposure limit for asbestos – this costs \$9.9 million per life saved. And drinking water standards for atrazine and alachlor? This rule clocks in at \$109 billion per life saved. Why do I raise this issue? Because lives are valuable, but in a world of limited resources, \$109 billion per life saved is a significant sum of money. Given these real impacts, we must ask ourselves about the broader opportunity costs we incur by not determining if there are more efficient ways to achieve similar public policy goals.

Third, time is money. Two of the biggest problems with regulations as they stand today are the length of time that the administrative process takes and the overlapping jurisdictions of agencies regulating the same thing. Perhaps one of the best-documented examples of this issue can be found in the experience of Cape Wind's offshore wind turbine project. Regardless of your feelings about offshore wind, we should all be able to agree that it should not take twelve years and \$65 million to complete the permitting process. Any rational developer would look at Cape Wind's experience and not even bother making the investment. Again, it does not matter if you are pro-business or if you dislike renewable energy – the costs our country incurs in not having a more streamlined process for major projects are substantial. I will devote a later portion of my testimony to speak about this in more detail.

Fourth, attitude is everything. Let me give you an example from Maine. In 1997, during my first term as governor, the leadership of National Semiconductor approached me and said they were thinking of locating a new, \$1.2 billion state-of-the-art semiconductor manufacturing facility in Maine. Through a coordinated and motivated effort, we were able to permit the site for construction in 29 days. How? We took an active attitude of finding solutions rather than looking for problems. There's no legislative remedy for the challenge of institutional inertia; instead, it is incumbent upon administrators to inculcate an attitude of "getting things done" through ongoing, active, and deliberate management.

Finally, abuse of the administrative process is an inappropriate regulatory technique. This particular issue is a point of departure for me relative to some of my friends in the environmental community. There are many people – often in the name of environmental protection – who utilize the regulatory process as a weapon, creating a war of attrition. This kind of abuse is what gives regulation a bad name and makes it more difficult for other consumer and environmental protection groups, who wish to draw attention to legitimate health and safety concerns, to gain traction with the respect to the business community.

It bears mentioning that tough standards and a timely process need not be at odds with one another. When I was governor of Maine, I used to say that I wanted Maine to have the toughest environmental standards in the country coupled with the country's most predictable, user-friendly process. A project's desirability should be based upon its merits, and its viability should not be determined by its opponents' ability to delay the regulatory process.

## What Can Be Done?

Part of the solution is to do precisely what the distinguished Chairman and Ranking Member of this subcommittee are doing – get a bunch of smart people in a room to talk about the issue. For my part, I would like to zero in on two specific issues.

First, as I suggest in my list of principles, our permitting procedures need substantial revision. To this point, the example of the Maine Power Reliability Program (MPRP) proves instructive.

In 2003, Central Maine Power embarked upon an upgrade of Maine’s electrical system, adding to the company’s network of substations and transmission lines that stretch from the town of Eliot on the New Hampshire border to Orrington, where it connects to transmission lines from northern and eastern Maine. The project was expected to inject more than \$1 billion in spending into the region’s economy. For context, 96% of the project fell within or immediately adjacent to the existing right-of-way.

In the eleven years since its inception, MPRP has experienced numerous permitting and regulatory barriers that significantly hampered its development. Specifically, developers had to go into over 70 towns to acquire permits, many of which have differing requirements for approval. In one town, over 30 public meetings were held! The permitting costs alone topped \$200 million and took more than four years.

This kind of regulatory delay is problematic on its face – it creates uncertainty for stakeholders, and the costs of time and resources are considerable. But the greater problem is hidden, because some of the most significant costs come in the form of projects that are never initiated – what I like to refer to as a type of “preemptive regulatory exhaustion.” If people self-select themselves out of embarking upon large, important projects because of administrative barriers, we are going to lose a lot of the dynamism that this society depends upon – particularly in the area of infrastructure development.

Referring to the challenges that Cape Wind confronted in acquiring permits, the *Wall Street Journal* made this sobering observation: "Contemplate this depressing change in America's can-do spirit: the 6.6 million-ton Hoover Dam that tamed the mighty Colorado River was finished in 1936 after a mere five years. Yet 130 offshore wind turbines, a pioneering project of President Obama's 'new energy economy,' may take three times as long to complete."<sup>2</sup>

This challenge underscores an essential question: Can we find a way to permit major projects at a cost that is not extraordinarily prohibitive and within a reasonable time frame without trampling on the legitimate rights of the people impacted? I believe we can. One of the first steps we could take is to address the issue of serial permitting – i.e., the phenomenon of uncoordinated and successive permitting approvals for a single project. When I was governor of Maine, we

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<sup>2</sup> “Cape Windbags,” *Wall Street Journal*, April 30, 2010.

addressed this problem by creating a system of “one-stop regulatory shopping,” which put the responsibility of issuing the final permit within one agency and required all the other agencies to coordinate and consult with the lead agency.

I believe a similar process could work at the federal level, and two members of this subcommittee, Senator Portman and Senator McCaskill, have introduced a bill that takes this very approach. The bill – S. 1397, the Federal Permitting Improvement Act of 2013 – would institute some important changes to federal permitting procedures, and I am proud to announce my co-sponsorship of the bill today.

Specifically, this bill establishes a formal role for a single “lead agency” to coordinate the permitting process for major capital projects, which would yield a more transparent and predictable timeline for stakeholders. This lead agency would facilitate greater coordination between federal, state, and local permitting authorities as well as encourage concurrent reviews when practicable. Additionally, the bill would create an online portal that would track the progress of major capital projects and provide links to associated documents, which would provide much needed transparency for the public. Finally, the bill would enact litigation reforms that would reduce the default statute of limitations on NEPA suits from 6 years to 150 days, a reform that has already been applied to transportation projects through the bipartisan 2012 MAP-21 bill.

The Portman-McCaskill bill builds upon recommendations from the President’s Jobs Council and the Business Roundtable, and it has the support of lawmakers and organizations from both sides of the aisle. While much is made of the partisan dysfunction in Washington these days, this bill demonstrates that there are still areas where we can find common ground. I applaud Senators Portman and McCaskill for their leadership on this issue, and I am glad to join them cosponsor of this legislation.

The second and final issue I would like to highlight for the subcommittee today is that of regulatory accumulation. Regulatory accumulation is a byproduct of the increasing number of entities vested with varying missions to protect the public. This accumulation is an entirely predictable phenomenon: if you hire a bunch of people to write workplace safety regulations, they will write workplace safety regulations. There is room for debate on the merits of this kind of institutional self-perpetuation,<sup>3</sup> but one thing is clear: we must find ways to revisit old regulations to make sure that they are still relevant to present circumstances and are not in conflict with requirements from other regulating bodies.

Currently, federal agencies embark upon periodic self-reviews in order to examine the utility of older regulations. However, the existing process is limited for a number of reasons, including

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<sup>3</sup> On this point, let me commend to the subcommittee Robert Kharasch’s book, *The Institutional Imperative: How to Understand the United States Government and Other Bulky Objects*, which offers a witty and incisive take on institutional behavior.

restricted budgetary and personnel resources, insufficient data collection, and competing priorities. Because of this, Senator Roy Blunt and I introduced S.1390, the Regulatory Improvement Act of 2013, which would provide an additional, expeditious mechanism through which a review of old regulations could be conducted.

The Regulatory Improvement Act would create an independent Regulatory Improvement Commission that would be tasked with reviewing outdated regulations with the goals of modifying, consolidating, or repealing regulations in order to reduce compliance costs, encourage growth and innovation, and improve competitiveness. The composition of the commission would be determined by congressional leadership and the President, and the commission would be tasked with identifying a single sector or area of regulations for consideration. After extensive review involving broad public and stakeholder input, the commission would submit to Congress a report containing regulations in need of streamlining, consolidation, or repeal. This report would enjoy expedited legislative procedures and would be subject to an up-or-down vote in both houses of Congress without amendment.

The idea for this commission came from the Progressive Policy Institute, whose economists have conducted extensive research on the topic of retrospective review. Since introduction, the bill has received significant support, including an [op-ed](#) in the *Wall Street Journal* by Staples founder and former CEO, Thomas Stemberg. The proposed legislation has been met with support from individuals and organizations on both sides of the aisle, and I urge the members of the subcommittee to consider devoting further time to the issue of regulatory accumulation and retrospective review.

Mr. Chairman, Ranking Member Portman, and members of the subcommittee, thank you for the opportunity to testify before you today. I look forward to an ongoing dialogue with you on these important topics.