



Testimony in Opposition to LDs 1808 & 1870:

“An Act to Enact the Maine Climate Superfund Act” & “An Act to Establish a Climate Superfund Cost Recovery Program to Impose Penalties on Climate Polluters”

Senator Tepler, Representative Doudera, and the distinguished members of the Committee on Environment and Natural Resources, my name is Harris Van Pate and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to provide testimony in opposition to LD 1808, “An Act to Enact the Maine Climate Superfund Act” as well as LD 1870, “An Act to Establish a Climate Superfund Cost Recovery Program to Impose Penalties on Climate Polluters.”

While this bill purports to address climate change adaptation by compelling fossil fuel companies to pay for climate-related costs through a new state-level “Climate Superfund,” it does so through a framework of retroactive liability, unprecedented legal ambiguity, and punitive taxation that will inevitably harm Maine's economy, increase energy costs, and invite constitutional challenges.

Retroactive, Vague, and Legally Questionable Liability

These bills seek to assign “strict liability” to entities retroactively for emissions dating back to January 1, 2000, regardless of their specific actions in or connection to Maine. Without a clear nexus to the state and evidence of individual wrongdoing, this retroactive liability contradicts longstanding American legal principles and invites serious constitutional scrutiny under both the Due Process and Commerce Clauses.

As written, the bill delegates enormous discretion to the Department of Environmental Protection (DEP) to identify “responsible parties” based on arbitrary emission thresholds, impose payment demands, and calculate damages without a transparent or standardized methodology. Such unchecked administrative power should concern all Mainers who value due process and limited government. This will lead to a similar public backlash which the DEP faced when it attempted to unilaterally pass sweeping statewide EV mandates last year.¹

¹ <https://www.centralmaine.com/2024/04/02/maine-compass-legislature-must-take-charge-of-ev-rules/>



Further retroactivity concerns

In addition to the above concerns, the retroactivity of this law raises many constitutional issues. While civil penalties and taxes apply retroactively are not *inherently* unconstitutional, when applied to conduct going back decades without any warning, questions about fairness do arise.

One comparable case is *Eastern Enterprises v. Apfel* (1998), where the Supreme Court ruled that a law retroactively taking substantial funds from coal companies to fund retiree health plans was unconstitutional.² This decision rested upon the significant cost to the companies, the far-reaching retroactive effect of the statute, and the company's lack of warning or expectation of having to pay this amount.

The similarities between the two hypothetical laws on environmental externalities, costs incurred for decades-old conduct, and substantial costs to specific companies should give this bill's proponents pause. As the law in *Apfel* violated the takings clause of the U.S. Constitution, our current Supreme Court may also find this bill in violation.

A Dangerous Precedent for Targeted Taxation

Rather than advancing responsible environmental stewardship, these measures would establish a dangerous precedent: weaponizing the tax code against politically unfavorable industries. These bills arbitrarily select fossil fuel companies, who already pay significant taxes and face state and federal regulations, and seek to recoup undefined "costs" without clear legislative guardrails or economic modeling. This taxation disguised as restitution risks chilling future energy investment in Maine at a time when energy security and affordability are more vital than ever.

Higher Energy Prices for Working Mainers

At its core, this bill does not punish multinational corporations—it punishes the consumer. Facing massive and uncertain liabilities under this law, energy producers will inevitably pass those costs to working Mainers through higher heating, electricity, and fuel prices. This regressive policy will disproportionately affect rural households and low-income families who already spend more of their income on energy needs.

Maine's Leadership Should Focus on Pragmatic, Market-Based Solutions

If Maine seeks to lead on climate adaptation, we must do so in ways that foster innovation and investment, not retribution and central planning. Maine Policy Institute

² <https://supreme.justia.com/cases/federal/us/524/498/>



supports voluntary, market-driven approaches to environmental stewardship. Burdening our economy with punitive, unconstitutional taxes on legacy industries will not make Maine more resilient—it will make us poorer, colder, and more divided.

Conclusion

LDs 1808 and 1870 may be well-intentioned, but they are fundamentally flawed in substance and process. They place the state in murky legal waters, set a perilous precedent for retroactive industry punishment, and will make life more expensive for Maine people. For these reasons, we strongly urge this committee to reject LDs 1808 and 1870 and request the state instead pursue climate strategies that respect the Constitution, empower consumers, and attract—not repel—economic opportunity to our state. Thank you for your time and consideration.