



Public Comments on ASPIRE Rule #25P - Working Cars for Working Families Program

Submitted by:

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When this program was first proposed in the Legislature and passed in the state budget in 2017, Maine's economy was not only roaring, the state was facing a workforce shortage. Today, the state is confronting a global pandemic—the managing of which falls to DHHS as the lead agency, and record unemployment. As a result of measures ordered to slow the spread of the Coronavirus, a record-breaking recession is predicted to hit Maine worse than any state except perhaps Nevada.

The ramifications for the state's budget have not yet been fully assessed, but the Mills Administration's own initial estimates, not only presented to the Appropriations and Financial Affairs Committee but also submitted to the state's Congressional delegation, are that the state will experience a \$3 Billion budget gap created by both new COVID-related expenses and budget shortfalls due to sharp declines in sales, income, corporate, and gas tax revenues.

Whereas the state in 2017 may have had a compelling interest in getting people to work, today, the state's compelling interest should be to preserve resources that may be needed by Maine's families devastated by the recent economic fallout and the closure, either temporarily or permanently, of hundreds of Maine businesses.

Overarching Concerns

This program, as drafted, incentivizes people to stay on welfare. Under these rules, a person could end up owning a car worth \$10,000 (or even \$30,000 or greater value) for a total of \$2,700 after two years. Say, for example, that an employer offers that participant a \$4,000 or \$5,000 raise and promotion (that would make the person program-ineligible) after that participant has been in the car program a year, and still owes \$1,200 on the vehicle. As drafted, this program increases the likelihood that the participant would turn down the promotion or encourage their employer to not even offer it, preferring to stay on welfare in order to keep the car, the low car payments and to achieve full ownership of the vehicle in a year. The rules don't provide for a buy-out or alternative payment plan in this situation, and without the car the person may not be able to get to work.

Increased earnings have a net-positive effect on workers' long-term Social Security benefits. The proposed Working Cars for Working Families program incentivizes people to stay on welfare and avoid opportunities that would be better for themselves and their family in the long term.

Furthermore, although the governing statute and the rules authorize the department to use the allocation to include other transportation options, "Such options may include, without limitation—furnishing

purchased or donated vehicles to participants; coordinating public or private transportation; facilitating car shares among participants; ride or shuttle service; or providing driver instruction or education,” the rules as drafted fail to address how alternatives to vehicle ownership would be implemented.

Program Administration Concerns

The statute specifically states that the program will provide: “access to reliable, affordable transportation,” but the rules as written do not address either factor. The rules as proposed are mostly about participant eligibility, not how DHHS or its contractor will assure that the cars are working and that the cars provided to the participating individual are affordable to maintain. The statute also specifically requires the rules address “administration requirements,” and the rules are exceptionally vague on those points.

Maine People Before Politics believes the rules do not fully address the following issues related to the administration of the program and the statute’s requirement that the vehicles will be affordable and reliable:

- No limits or specifications for the types of vehicles that can be used.
- No limits on the value of the vehicles obtained for the program or whether they are new or used.
- Although the rules allow for donations, there are no guidelines in the rules providing a framework for accepting and evaluating donations prior to transferring to the participant, what do with donations that don’t meet the standard of “reliable” or “affordable,” or high-value donated vehicles.
- No established ratio of donations versus purchased vehicles that would be used (e.g., a goal or limit to have 60% donated vehicles and only 40% purchased).
- No rules regarding solicitation of donations or limits on the money that can be spent to solicit donations (e.g., advertising on TV or radio for donations).
- No threshold of the percentages of the \$6 million that can be used for purchasing vehicles, pay for vehicle repairs prior to transfer to the participant, or the staffing and management of the program and other overhead costs.
- No standards or procedures as to how purchased cars will be procured or assessed for reliability if used, either prior to the purchase or prior to transferring to the participant.
- No set-aside or rules governing the limit on the cost of repairs that would need to be done before turning over a vehicle to a participant (e.g., a limit on repairs could be 30% of the value of the car at the time of donation).
- No “lemon law” provision if the vehicle provided a participant turns out to have excessive repair issues.
- No exclusions of donated high-end or luxury vehicles for which average or routine repairs would be cost-prohibitive for an ASPIRE participant.
- No requirement that donated cars of a certain high value be sold and the proceeds used to buy two (or more) vehicles to meet the needs of more participants.
- Lack of oversight regarding car accidents in situations where the participant is at fault or not at fault and how such accidents will affect eligibility. For example, if the car is totaled but the driver-participant is found not to be at fault, do they remain eligible for another car? If so, do they start their payments back at the beginning with a new down payment, or pick up payments where they left off?
- Lack of clarity around a participant becoming ineligible while in possession of the car and how the program would repossess the car and the title. For example, in a case where the participant is cited for a moving violation that would make them ineligible, the rules do not indicate the

procedures for returning the vehicle to the agency, the time frame, and whether the individual can continue to drive the vehicle while it is still in their possession.

- Lack of clarity around the justification for the title transfer and lack of liens. The use of liens would better ensure accountability and be more likely to prevent unauthorized transfer or sale of the vehicle.
- No specification that if an electric vehicle is donated or purchased, whether the program is authorized to pay for a charging station to be installed at the individuals' home or workplace, and any restrictions on the use of that charging station by others. If the individual moves, is a second charging station authorized? If the individual rents and moves away from the lodging where a charging station was installed, is the landlord required to reimburse the program for the value of the charging station?
- No restriction on how long the participant must keep the car after "graduating" from the program and subsequent program participation. For example, is the participant required to keep the car, and keep it in working condition, as long as the person continues to participate in TANF/ASPIRE, or can the participant sell the car immediately after graduation? If the participant sells the car after graduating, are they eligible to participate a second time in the program?
- No indication of whether there are federal or state income tax implications for the participant if, upon graduation, they now own the vehicle with a value exceeding what they paid for the vehicle.

Violations of the Rules

The rules lack clarity around how DHHS or its contracting organization will monitor the compliance and identify violations of the program's requirements. For example, a commitment to use the "vehicle primarily for purposes of commuting to and from work" seems unenforceable without further definition of "primarily" and a delineation of acceptable secondary uses. For example, trips to the grocery store may be permissible. Examples of non-allowable uses could include such uses as trips to casinos or out-of-state vacations.

Under the Section "VII. PARTICIPATION AND CONTINUED ELIGIBILITY REQUIREMENTS," the proposed rules lack monitoring requirements and standards for the commitments the participant is required to make to the department in order to remain eligible. For example, A(4)h. requires "A commitment to report any accidents, thefts, or similar types of incidents involving the vehicle to law enforcement immediately." The department fails to define "immediately." The department also, and significantly, fails to require that the incident be reported to the department and fails to specify a deadline for when that report must be made.

In A(4)o. "A commitment to immediately return the vehicle to the Department upon demand, for failure to comply with the terms of the Agreement or the rules of the Program, including transferring title to the Department where applicable," the department fails to delineate the steps it will take to repossess a vehicle and/or a title when a participant is in noncompliance and fails to return the vehicle on demand. It appears that the department's only recourse is VII. C (4), where the department is authorized to pursue an Intentional Program Violation for the value of the vehicle.

The rules also are inadequate in pursuing significant violations of the program, namely the sale of the vehicle without written authorization from DHHS.

Under Maine law, a prosecution for welfare fraud is not the equivalent of a prosecution for car theft. Welfare fraud prosecution falls under a different statute with a specified punishment.

Welfare Fraud Prosecution

Title 17-A: MAINE CRIMINAL CODE

Part 2: SUBSTANTIVE OFFENSES

Chapter 37: FRAUD <https://legislature.maine.gov/statutes/17-A/title17-Asec905-C.html>

“§905-C. Misuse of public benefits instrument

1. A person is guilty of misuse of a public benefits instrument if the person knowingly:
 - A. Transfers a public benefits instrument without authorization of the agency issuing the instrument; or
 - B. Obtains or possesses a public benefits instrument that was obtained without authorization of the agency issuing the instrument.
2. As used in this section, "public benefits instrument" means electronic benefits transfer cards, coupons, vouchers and any other means for distributing benefits from the following programs:
 - A. The municipal general assistance program under Title 22, chapter 1161;
 - B. The TANF program under Title 22, chapter 1053-B;
 - C. The statewide food supplement program under Title 22, section 3104;
 - D. The child care subsidies under Title 22, chapter 1052-A; or
 - E. The Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.
3. Misuse of a public benefits instrument is a Class D crime.”

Theft (including automobile theft)

Title 17-A: MAINE CRIMINAL CODE

Part 2: SUBSTANTIVE OFFENSES

Chapter 15: THEFT <https://legislature.maine.gov/statutes/17-A/title17-Asec353.html>

“§353. Theft by unauthorized taking or transfer

1. A person is guilty of theft if:
 - A. The person obtains or exercises unauthorized control over the property of another with intent to deprive the other person of the property. Violation of this paragraph is a Class E crime;
 - B. The person violates paragraph A and:
 - (1) The value of the property is more than \$10,000. Violation of this subparagraph is a Class B crime;
 - (2) The property stolen is a firearm or an explosive device. Violation of this subparagraph is a Class B crime;
 - (3) The person is armed with a dangerous weapon at the time of the offense. Violation of this subparagraph is a Class B crime;
 - (4) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;
 - (5) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime; or . . .”

As one can see, the punishments under the statutes governing car theft are vastly different, with the theft being a felony conviction. Car theft’s punishment would depend on the value of the auto, and could be either a Class C or B crime: both felonies (Class C: Crimes punishable by up to 5 years incarceration and a \$5,000 fine. Class B: Crimes punishable by up to ten years incarceration and a \$20,000 fine). Whereas welfare fraud is a misdemeanor Class D crime (Class D: Crimes punishable by up to 364 days incarceration and a \$2,000 fine) and is prosecuted under a different section of the criminal code.

Because the rules as drafted put no limits on the value of the vehicles provided to participants, it could easily be that an unauthorized sale would be the equivalent of a Class B crime, with a vehicle value of at least \$10,000 at the time of transfer to the participant.

Therefore, in the case of the Working Cars for Working Families program as proposed, prosecution for car theft would not only more closely reflect the loss of state's (and taxpayers') investment in the vehicle, it would be a much greater deterrent of a participant transferring the car without written authorization than prosecution for welfare fraud.

Conclusion

Right now, Maine's situation in the pandemic is fluid and evolving.

If the Mills Administration believes that this program has value for rural Maine residents, at minimum it needs to add significant administrative oversight requirements for reliability and affordability, program administration rules, target metrics by which success will be measured, additional rules to clarify the routine events of car ownership such as accidents and moving violations, and the ability to prosecute for theft by unauthorized taking or transfer for individuals who sell or transfer the car without DHHS's authorization.