



## **Testimony in Support of LD 1372:**

“An Act to Establish a Special Committee to Review Routine Technical Rules”

Senator Baldacci, Representative Salisbury, and the distinguished members of the Committee on State and Local Government, 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 testify in support of LD 1372, a bill that offers a clear path to strengthen accountability, restore proper checks and balances, and prevent costly and unnecessary legal conflicts like those that Maine has recently experienced.

### **Background: Routine Technical Rules, Big Impact**

Under Maine’s Administrative Procedure Act, proposed agency rules are divided into “major substantive” and “routine technical.” While major substantive rules must receive affirmative approval from the entire Legislature to take effect, routine technical rules may be adopted and implemented by agencies without any formal legislative vote.<sup>1</sup> Theoretically, this distinction is intended to streamline procedures for rules seen as minor or noncontroversial.

But in practice, the line between these two categories is often blurry. Rules classified as “routine technical” can still carry significant policy weight and impose major economic, environmental, or social costs on Mainers. Yet they currently bypass legislative review entirely.

This creates a troubling gap in democratic oversight. Suppose an agency, or the legislature, improperly classifies a type of rule as routine. In that case, there is little recourse short of costly litigation—or, as was recently the case in Maine, the extraordinary step of passing an emergency bill to reclassify the rule as major substantive.

### **Case Study: EV Mandate Rule and Resulting Lawsuit**

The controversy over electric vehicle mandates in 2023–2024 illustrates precisely why a regulatory review committee is so necessary. The Maine Department of Environmental Protection proposed adopting California-style Advanced Clean Cars II (ACC II)

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<sup>1</sup> <https://legislature.maine.gov/statutes/5/title5sec8071.html>



standards, requiring that 82% of new vehicle sales in Maine be zero-emission vehicles by 2032.<sup>2</sup> The proposal was initially treated as a routine technical rule.

This rule would have transformed Maine’s vehicle market, impacting thousands of consumers and small businesses, particularly in rural areas with sparse access to EV infrastructure. It was anything but routine, though I must admit, it was quite technical in nature. Yet the proposal was able to move forward without legislative oversight.

A coalition of citizens, auto dealers, and lawmakers raised concerns, but their options were limited. Ultimately, the Legislature had to pass a separate bill reclassifying the proposed EV rule as a more significant substantive rule to ensure proper legislative review.<sup>3</sup> Afterwards, a lawsuit was filed by the Conservation Law Foundation against the Maine Department of Environmental Protection alleging that the agency violated its duty under the Maine Climate Action Plan by not implementing the EV mandates. Although the court dismissed the case in late 2024, ruling the agency had discretion, the litigation was costly, divisive, and avoidable.

A standing legislative committee overseeing proposed routine technical rules would have allowed the Legislature to assess the EV mandate without needing emergency legislation, before the rule advanced to the point of conflict and public outcry. It could have prevented the confusion, preserved public trust, and avoided the need for a new statute and a lawsuit.

## **A Proven National Model: How Other States Handle Rule Review**

Maine’s current structure places itself in a strange place nationally. Many states already have institutional mechanisms to review major and minor administrative rules, ensuring executive agencies cannot create binding policy outside the legislative process.

- **Illinois:** The Joint Committee on Administrative Rules (JCAR) is one of the most robust oversight bodies in the country. Created in 1977, JCAR systematically reviews all agency rules—proposed, emergency, and preemptory. JCAR can block rules or require modification before they are adopted. It comprises 12 legislators, equally divided by chamber and party, and is staffed

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<sup>2</sup>

<https://mainemorningstar.com/2024/03/20/maine-board-of-environmental-protection-rejects-advanced-clean-car-ii-act/#:~:text=The%20Advanced%20Clean%20Cars%20II,existing%20cars%20in%20the%20state.>

<sup>3</sup>

[https://mainehousegop.org/member\\_news\\_item/bep-takes-a-u-turn-on-ev-2/#:~:text=bill%20to%20require%20legislative%20approval%20for%20such,and%20must%20be%20approved%20by%20Maine's%20Legislature.](https://mainehousegop.org/member_news_item/bep-takes-a-u-turn-on-ev-2/#:~:text=bill%20to%20require%20legislative%20approval%20for%20such,and%20must%20be%20approved%20by%20Maine's%20Legislature.)



with attorneys and policy experts to assist in review. JCAR also publishes a weekly newsletter informing the public of regulatory activity.<sup>4</sup>

- **Maryland:** The Committee on Administrative, Executive, and Legislative Review consists of Senators and Delegates who monitor agency rules throughout the year. This committee may review any regulation to assess its legality, necessity, or conformance with legislative intent. It reports annually to the General Assembly with recommendations for improving agency procedures.<sup>5</sup>
- **Louisiana:** The House and Senate Governmental Affairs Committees provide pre-implementation review of all administrative rules. If they object to a rule, it is suspended until a full vote of the Legislature can be held. This ensures no significant policy takes effect without legislative input.<sup>6</sup>
- **Florida,<sup>7</sup> Michigan,<sup>8</sup> and Ohio<sup>9</sup>** all have robust rule review structures that empower legislative committees to reject or require revision of agency proposals. Florida's Joint Administrative Procedures Committee can review any proposed rule for consistency with legislative intent, economic impact, and procedural compliance.
- **Many other states,** both Democratic and Republican, have committees similar to this that allow legislative oversight of proposals without requiring submission of a bill to the full legislature to approve proposed rules.<sup>10</sup>

These states recognize a fundamental truth: delegation of authority to agencies must not mean abdication of oversight by elected lawmakers.

## **LD 1372: A Tailored, Responsible Reform**

LD 1372 offers a Maine-specific solution modeled on these proven systems. It would establish a bipartisan Special Committee on Regulatory Review composed of six Senators and six Representatives, evenly divided between parties. This committee would:

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<https://www.ilga.gov/commission/jcar/default.asp#:~:text=%20The%20Joint%20Committee%20on%20Administrative%20Rules,created%20by%20the%20General%20Assembly%20in%201977.&text=%20JCAR%20is%20composed%20of%2012%20legislators,two%20houses%20and%20the%20two%20political%20parties.>

<sup>5</sup> <https://www.mabe.org/wp-content/uploads/2013/01/AELR-Cmte-handout.pdf>

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<https://www.legis.la.gov/legis/LegisInfo.aspx#:~:text=This%20power%2C%20closely%20related%20to%20the%20power,is%20an%20important%20exercise%20of%20this%20authority.>

<sup>7</sup> <https://www.japc.state.fl.us/>

<sup>8</sup> <https://council.legislature.mi.gov/JCAR>

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<https://www.lsc.ohio.gov/assets/legislation/127/hb119/en/files/hb119-jcr-greenbook-as-enrolled-127th-general-assembly.pdf>

<sup>10</sup> <https://levin-center.org/state-oversight-academy/oversight-in-the-50-states/>



- Meet multiple times each year to review proposed routine technical rules;
- Approve, reject, or reject with comment rules based on necessity, efficiency, and public benefit;
- Review emergency rules after adoption to ensure no abuse of the emergency rulemaking process;
- Issue an annual report detailing all reviewed rules and committee actions to the Legislature.

Importantly, this bill does not create unnecessary bureaucracy or delay. Instead, it ensures that rules—especially those that may have been misclassified—receive a bare minimum level of potential legislative review. It mirrors the structure and limited meeting schedule of the Government Oversight Committee and the administrative review committees in many other states, which have proven successful in different areas of state accountability.

### **Conclusion: Legislators Must Regain Oversight of the Rules That Govern Mainers**

As rules increasingly dictate the practical application of laws passed by this body, oversight of those rules becomes essential to preserving legislative authority and public accountability. LD 1372 restores this balance. We strongly urge you to vote “Ought to Pass” on LD 1372. Thank you for your time and thoughtful consideration.