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MAINE CHAPTER

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To: Joint Committee on Judiciary
From: John Fitzgerald, Sierra Club Maine
Date: April 4, 2025
Re: **Testimony in Support of L.D. 1262:** *An Act to Improve Government Transparency and Accountability by Establishing a Process to Allow a Person to Require the State to Enforce Certain Laws and Rules*

Senator Carney, Representative Kuhn, and members of the Joint Committee on Judiciary,

Thank you for the opportunity to testify today. I am John Fitzgerald, testifying on behalf of Sierra Club Maine, representing over 22,000 supporters and members statewide. Founded in 1892, Sierra Club is one of our nation's oldest and largest environmental organizations. We work diligently to amplify the power of our 3.8 million members nation-wide as we work towards combating climate change and promoting a just and sustainable economy. To that end, we support L.D. 1262 and urge an "ought to pass" report on it, preferably as amended in the manner described below and in the appended version of the bill.

My testimony begins with a summary conveying the key points of our written testimony within the three minutes provided for our oral testimony. We believe our testimony reflects the sentiments of the sponsor when we recommend today that the scope of this bill be trimmed back to its core as we suggest in an amendment in the nature of a substitute included as Appendix 1.

Summary of Testimony

We recommend that the Committee report L.D. 1262 to pass, preferably as amended as we propose in the appended version.

L.D. 1262 as amended would provide to Maine citizens the power to petition the Department of Environmental Protection (DEP) to adopt and enforce basic standards to protect our air and water — just in time to replace some of the protections that the U.S. Environmental Protection Agency (EPA) has up to now provided for Maine.

Those procedural tools are:

1) the ability of citizens to ask the agency that enforces environmental law to improve or enforce the clean air and water standards;
2) the ability of citizens to ask a court to act if the agency does not, and
3) the ability of the agency to cover the cost of enforcement.

In less than 100 days since January 20th we have seen the strongest evidence possible of the need for this bill as federal protections for people's health, for our environment and natural resources are being dismantled at record speed.

Most states rely on federal EPA standards as their own minimum standards while being free to adopt stricter measures if they so choose. (https://www.maine.gov/dep/water/wqs/index.html) That is the way these Federal laws work but it is especially important today, and important in Maine. Being downwind of air pollution from the lower 48 states, Maine has every reason to at least keep those standards in place while it decides which ones it should improve.

The most essential of those federal environmental protection statutes were co-authored by none other than Maine's famous son Senator Edmund Muskie. He made sure that the Clean Air Act of 1970 and the Clean Water Act of 1972, among other laws, had citizen suit provisions, so that citizens could stand in for the EPA and the Department of Justice when presidents like Richard Nixon would not.

Today, if a Federal pollution standard disappears and the DEP does not move to adopt it under state law, L.D. 1262 provides a way for citizens or a public interest organization or a small to medium sized business to petition the DEP to adopt that standard if the underlying state pollution law allows it.

L.D. 1262 also helps the agencies and the taxpayers of Maine by laying the groundwork for Maine agencies to assess charges to be paid by those who are permitted to emit pollution, in order to cover the costs of ensuring compliance or cover the costs of citizens or small businesses using the provisions of this act. That is in large part what the Independent Offices Appropriations Act (IOAA) and the Equal Access to Justice Act do at the Federal level.

In conclusion, L.D. 1262 provides an efficient way for citizens, organizations and businesses to help maintain and improve Mainers' health and environment and protect against federal rollbacks. The amendment we propose below, clarifies that the bill would apply to environmental standards. We recommend that the Committee pass L.D. 1262, preferably amended as recommended in the appended version.

Testimony in Full

We believe our testimony reflects the sentiments of the sponsor when we recommend today that the scope of this bill be trimmed back to its very core as we suggest in an amendment in the nature of a substitute included as Appendix 1.

That is, we recommend that the bill be limited to the Department of Environmental Protection's regulatory functions and to a certain amount of assistance provided by the office of the attorney general.

We also recommend that small businesses that do not have permits to pollute but may be harmed by polluters be allowed to use the provisions of this bill.

L.D. 1262 as amended in that way would provide to Maine citizens the power to petition the DEP to adopt and enforce standards based on science to protect our air and water just in time to replace some of the protections that the Environmental Protection Agency (EPA) has given Maine that are now being taken away by the Trump Administration.

Those procedural tools are:

1) The ability of citizens or small businesses that do not pollute but may be harmed by pollution to ask the agency that enforces environmental law to improve or enforce the clean air and water standards;

2) The ability of such citizens and businesses to ask a court to act if the agency does not, and

3) The ability of the agency to charge those who are allowed to emit a certain amount of pollution to pay to cover the costs of ensuring compliance or a court to order payment if citizens prove that a violation has occurred.

In less than 100 days since January 20th we have seen the strongest evidence possible of the need for this bill in Maine and in other states around the country. In those days, we have seen President Trump and his appointees and nominees acting at lightning speed to dismantle the agencies and the assistance and funding they usually provide to the states in support of protecting our environment and natural resources, and our access to information among many other important government functions.

The Center for American Progress on April 4, 2025 published this summary (https://www.americanprogress.org/article/the-trump-administration-has-invited-power-plants-to-emit-more-toxic-pollution-in-a-giveaway-to-corporate-polluters/) of a report by the New York Times and related sources:

> On March 27, 2025, *The New York Times* reported that the Trump administration has invited coal- and oil-fired power plants and other sources of toxic air pollution to send an email requesting exemptions from clean air regulations. On a dedicated webpage, the U.S. Environmental Protection Agency (EPA) wrote that it had "set up an electronic mailbox to allow the regulated community to request a presidential exemption under section 112(i)(4) of the Clean Air Act" by March 31, 2025. Already, the nation's most-polluting coal-burning power plant is known to have made a request.
> Section 112(i)(4) is a little-known provision that allows the president to exempt entities from Clean Air Act emissions standards if a) the technology required to meet current emissions standards is not available and b) an exemption is in the national security interest of the United States. These requirements cannot be met by existing facilities, and in any case, the administration has provided insufficient time or process to prove they are fulfilled. Though President Donald Trump has promised to deliver the "cleanest air and water," this new action demonstrates his administration's true goal of prioritizing corporate polluters over Americans and their health.

And as the newspaper The Guardian put it:

> A push by Donald Trump's administration to repeal a barrage of clean air and water regulations may deal a severe blow to US public health, with a Guardian analysis finding that the targeted rules were set to save the lives of nearly 200,000 people in the years ahead.
>
> Last week, Trump's Environmental Protection Agency (EPA) provoked uproar by unveiling a list of 31 regulations it will scale back or eliminate, including rules limiting harmful air pollution from cars and power plants; restrictions on the emission of mercury, a neurotoxin; and clean water protections for rivers and streams.

The Center for American Progress calculated the funding for clean air and water that the States are going to lose and cited multiple court orders in place that may or may not prevent that harm in the long run:

> All people—regardless of income, ZIP code, or race—have a fundamental right to breathe clean air, drink safe water, and live in healthy and safe communities. To further this goal, Congress funded environmental and public health protections through the Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act (IIJA). These protections include funds to help states and cities monitor, reduce, and clean up dangerous pollution;

increase access to clean and affordable energy; and upgrade home energy efficiency to save families money on their electricity bills. IRA and IIJA funds also help state and local governments expand access to clean and safe water and prepare for increasingly common extreme weather events caused by climate change.
Since taking office, the Trump administration has canceled funding for many of these programs—despite multiple court orders to reinstate them. In March, the administration announced that it had canceled 400 grants totaling $1.7 billion aimed to improve air and water quality and prepare communities for more extreme weather events, along with $20 billion in grants to reduce climate and local air pollution and support affordable clean energy. Denying states, cities, and communities across the country funds to implement projects that reduce pollution and energy costs and protect them from more extreme weather puts Americans' health and jobs at risk while driving up household energy bills.

Most states rely on EPA standards as their own minimum standards while being free to adopt stricter measures if they so choose. That is the way these Federal laws work but it is especially important in Maine. Being downwind of air pollution from the lower 48 states, Maine has every reason to at least keep those standards in place while it decides which ones it should improve. In fact, Maine's Department of Environmental Protection has on its website an impressive list of cooperative programs and plans that it creates with the Federal Environmental Protection Agency so that they can cooperate in enforcing the clean air and water acts and other basic environmental laws.

L.D. 1262 is designed to protect against Federal roll backs of environmental protection. The most essential of those federal statutes were co-authored by none other than Maine's famous son Senator Edmund Muskie. He made sure that the Clean Air Act of 1970, the Clean Water Act of 1972, among other laws had citizen suit provisions, so that citizens could stand in for the EPA and the Department of Justice when presidents like Richard Nixon would not enforce the law or allow their agencies to do so.

By providing to citizens the power to help the agencies and the courts to carry out the will of the legislature, Maine's Senator Muskie hoped to protect the people of Maine and the nation from administrations that were not eager to enforce the law. That is why Muskie put them into the Federal laws he co-authored during the Nixon administration. Many Mainers experienced a state administration's unwillingness to require cleaner air and water during the LePage administration.

Therefore, if a Federal pollution standard disappears and the DEP does not move to adopt it under state law, L.D. 1262 should provide a way for a public interest organization to petition the DEP to adopt that standard if the underlying state pollution law allows it.

This bill would not change the underlying substantive law. It simply provides an efficient way to step in to apply that law in regulations if an agency for whatever reason, does not.

Without citizen suit provisions setting deadlines and offering to reimburse those who stand in successfully for an over-stretched or unwilling agency we might lose the quality of life that our legislators intended to guarantee for us. But, such protective measures take time and brave independent judges to make them work. Furthermore, Federal courts oversee Federal agencies in general while state courts oversee state agencies so it is important to create these tools at the state level if our states are going to have to do more to protect themselves and their citizens.

What may not be apparent in the bill itself or in the summary of it is that it is based entirely on federal statutes that have served important purposes for many years.

Those Citizen suit provisions generally allow citizens to sue to enforce these basic environmental laws, and to be awarded market rate fees to cover the cost of their experts and their attorneys when

they prevail in court. That is because they have done a public service acting as private attorneys general and should not have to bear the costs for doing that on behalf of all citizens.

As one public interest law center puts it:

"The citizen suit provisions of the Clean Air Act, Clean Water Act, and more than a dozen other environmental statutes are powerful tools in the fight against illegal pollution. Plaintiffs in citizen suits can ask the court to impose civil penalties for a source's past violations, payable to the government. They can also request injunctive relief, typically an order from the court requiring a company to take specific actions to correct compliance problems and to avoid future violations. And when settlements occur, funds often go to projects in the affected community. (https://www.nelc.org/get-involved/citizen-enforcement/)"

In 1980 Congress adopted an across-the-board approach that also included small businesses among those who could be reimbursed for their reasonable expenses in challenging agencies. The Congressional Research Service describes that provision of the Equal Access to Justice Act:

> The EAJA permits recovery of fees by both organizations and individuals, but Sections 504 and 2412(d) limit the parties that may receive a fee award. First, those provisions only allow for one-way fee shifting: "a prevailing party other than the United States" may receive attorney's fees, while the federal government may not. Second, only an individual with a net worth of $2 million or less, or the owner of a business or other organization worth $7 million or less and with no more than 500 employees may recover an award of attorney's fees under Sections 504 and 2412(d). Nonprofits exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are not subject to the net worth cap.

We recommend that the outdated asset and fee limits be updated and set to be adjusted by the director of the fund according to the cost of living or prevailing market rates for attorneys and expert witnesses of the kind participating in such proceedings and provide suggested language to do that in the appended draft.

Another famous son of Maine, Senator George Mitchell, succeeded Senator Muskie in the chairmanship of the Senate Environment and Public Works Committee. In that position, he defended those same statutes from attempts to weaken them and supported important practical improvements in them. One amendment to the Endangered Species Act, adopted in 1988, is somewhat similar to part of this bill. It was the addition of an awards provision that would, subject to appropriations, devote the proceeds of penalties back to the enforcement of the statute rather

than directly back to the general fund of the U.S. Treasury. There is a water quality research center at the University of Maine named after Senator Mitchell, whose findings could form the basis of improved regulations to keep up with new threats from substances like PFAS.

L.D. 1262 helps the agencies and the taxpayers of Maine by laying the groundwork for the agencies to require those who require permits to limit their pollution to cover the costs of enforcement. That is what the Independent Offices Appropriations Act (IOAA) of 1952 does at the Federal level. That law gives federal agencies the authority to levy reasonable fees to cover the cost of their permitting, oversight, and enforcement of the laws. That is an entirely appropriate way of internalizing the cost of providing those goods and services that may create pollution or other harm to public health or resources, while the permittees are conducting their permitted business. That provides all concerned with an incentive to minimize pollution or other violations of law, making the jobs of the agencies easier.

One used to be able to read about the administration of the IOAA in reports by the congressional Government Accountability Office (GAO). Those GAO studies can guide the state of Maine as it creates the plans for a similar program through the provision in this bill requesting that the attorney general inform the legislature of options for such a program. But some of those are no longer posted. Here a non-profit organization, Ballotpedia, summarizes one such survey by the GAO:

> The Independent Offices Appropriations Act (IOAA) grants broad authority to federal agencies to assess user fees. The fees must be fair and based on the costs to the government and the value of the service provided, among other considerations. Fees collected are deposited in the general fund of the U.S. Treasury and are not directly available to the agency.[7]
>
> The IOAA, codified at 31 U.S. Code § 9701, provides the following guidance for agencies:[8]

" (a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.
(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.[4]

"

Impact

Agency reliance on user fees has increased since the passage of the IOAA, a trend that the Congressional Budget Office attributes to various budget sequestration and reconciliation measures that have motivated agencies to seek out new funding sources. Many federal agencies today depend on user fees to fund services, according to a report by the U.S. Department of Agriculture's (USDA) Economic Research Service. In 2007, a GAO report found that total user fee collections across federal agencies amounted to $233 billion. In a review of 21 federal agencies, the USDA's report found that nine agencies relied on user fees to make up at least 80 percent of agency funding.[9][10][7]

The following table provides examples of user fees charged by federal agencies:[9][7]

Examples of user fees charged by federal agencies, 2018	
Federal agency	**User fee(s)**
Food and Drug Administration	Application fees for new drugs, annual fees on existing drugs, annual fees on manufacturing plants
National Marine Fisheries Service	Inspection fees
Nuclear Regulatory Commission	Inspection fees, license fees, and annual fees to all active entities
National Park Service	Entrance fees, camping fees
U.S. Postal Service	Postage fees
U.S. Citizenship and Immigration Services	Fees for immigrant and naturalization benefit applications
USDA's Food Safety and Inspection Service	Fees for meat, poultry, and egg products overtime inspection services

https://ballotpedia.org/Independent_Offices_Appropriations_Act_of_1952#:~:text=”-,Impact,U.S.%20Citizenship%20and%20Immigration%20Services

Pollution contaminated many areas before Federal environmental law

In my early childhood in the 1950s, my father worked for the Goodyear Atomic Corporation and we lived in Chillicothe, Ohio. There we were surrounded by two dangerous forms of pollution. The first was the radioactive dust from the Goodyear Atomic Plant, where the Federal Government paid Goodyear to enrich nuclear material for atomic bombs. My father did not work on the shop floor, but the men who did were not allowed to bring their boots into their own homes, but had to tie them by the shoe strings to the porch lights before they came into their own houses because otherwise they would poison their families with radioactive material. I would look up and see those boots over my head and wonder how much radioactive dust had fallen onto their front porch when I walked over to visit a friend

whose father worked on that factory floor.

The more noticeable pollution was from the paper factory nearby. The yellow smoke filled the sky on some days and its stench was unavoidable for much of the year.

In the summer of 1960 we loaded up our new station wagon and a U-Haul trailer and moved to Bangor Maine. On the way, we drove past Lake Erie. It looked and smelled like a dead zone. My Dad explained that the pollution that had been poured into the Lake had killed most of the fish and other living things in the Lake. Once we arrived in Maine the air was cleaner and so was the water as far as we could tell.

Most people alive today do not appreciate how bad the pollution once was, yet now President Trump and his team are dismantling the agency that has protected us all for decades. We need to step up and protect ourselves.

Thank you.

Appendix 1

An amendment in the nature of a substitute for:

An Act to Improve Government Transparency and Accountability by Establishing a Process to Allow a Person to Require the State to Enforce Certain Laws and Rules

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §8055, sub-§3, as amended by PL 1985, c. 506, Pt. A, §4, is further amended to read:

3. Receipt of petition; judicial review. Within 60 days after receipt of a petition, the Commissioner of the Department of the Environment or the Attorney General, as appropriate, shall either notify the petitioner in writing of his or her denial, stating the reasons ~~therefor~~ for the denial, or initiate appropriate rule-making proceedings. Whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, the agency shall initiate appropriate ~~rulemaking~~ rule-making proceedings within 60 days after receipt of the petition. The petition must be verified and certified in the same manner provided in Title 21A, section 354, subsection 7, prior to its presentation to the agency. If, within 60 days after receipt of a

petition, the agency fails to notify the petitioner in writing of its denial or to initiate appropriate rule-making proceedings, or if the agency has initiated rule-making proceedings the petitioner believes to be inconsistent with the submitted petition, the person that submitted the petition may seek appropriate judicial review of the agency's actions consistent with section 8058 or, as applicable, subchapter 7.

Sec. 2. 5 MRSA §9051, sub-§1, as amended by PL 2005, c. 61, §1, is further amended to read:

1. Adjudicatory proceeding. In any adjudicatory proceedings of the Department of Environmental Protection or the Attorney General, ~~except~~ including those proceedings initiated pursuant to section 9051-B, but excluding those proceedings involving correctional facilities, the Workers' Compensation Board, the Maine Motor Vehicle Franchise Board or the State Parole Board, the procedures of this subchapter apply.

Sec. 3. 5 MRSA §9051-B is enacted to read:

§9051-B. Proceeding to enforce certain existing laws or rules

In accordance with the provisions of this section and this subchapter, a person may petition an agency or the Attorney General, as applicable, to enforce an existing law or rule relating to regulation of the environment, natural resources, public health or safety or freedom of information and government transparency.

1. Form; content. The Commissioner of the Department of the Environment and the Attorney General shall designate the form for petitions under this section and the procedure for their submission, consideration and disposition. A petition submitted by a person under this section must, at a minimum, provide sufficient information for the agency or the Attorney General to identify the existing law or rule the person is seeking enforcement of and the purposes for which the person is seeking that enforcement.

2. Receipt of petition; judicial review. Within 60 days after receipt of a petition, the Commissioner or the Attorney General shall either notify the petitioner in writing of its denial, stating the reasons for the denial, or initiate an appropriate proceeding to enforce an existing law or rule as specified in the petition. If, within 60 days after receipt of a petition, the Commissioner or the Attorney General fails to notify the petitioner in writing of its denial or to initiate appropriate proceedings, or if the Department or the Attorney General has initiated a proceeding the petitioner believes to be inconsistent with the submitted petition, the person that submitted the petition may seek appropriate judicial review of the Department's or Attorney General's actions consistent with subchapter 7, as applicable.

Sec. 4. 5 MRSA c. 375, sub-c. 8 is enacted to read:

SUBCHAPTER 8

FUND FOR ADMINISTRATIVE OVERSIGHT

§11021. Fund for Administrative Oversight established; administration

This section establishes and governs the administration of the Fund for Administrative Oversight.

1. Fund established; sources of fund. The Fund for Administrative Oversight, referred to in this section as "the fund," is established within the Office of the Attorney General as a

nonlapsing, dedicated fund, to be administered by the administrator, for the purposes described in subsection 3. The fund may accept revenue from grants, bequests, gifts or contributions from any source, public or private, including any sums that may be directed by law or appropriated by the Legislature, transferred to the fund from time to time by the State Controller or dedicated to the fund.

2. Fund administrator. The fund is administered by a fund administrator, referred to in this section as "the administrator," who is appointed by the Governor for a 4-year term and may be reappointed by the Governor to additional 4-year terms.

3. Fund purposes. Revenue credited to the fund is distributed in the manner described in subsection 4 for the following purposes:

A. To support actions by persons seeking to petition or that have petitioned an agency for adoption or modification of rules pursuant to section 8055, including persons seeking judicial review of an agency's actions in response to a petition;

B. To support actions by persons seeking to petition or that have petitioned an agency or the Attorney General to initiate a proceeding to enforce an existing law or rule pursuant to section 9051-B, including a person seeking judicial review of an agency or the Attorney General's actions in response to a petition; and

C. To support actions by persons seeking to intervene or otherwise participate in agency rulemaking conducted under subchapter 2 or 2-A, in an adjudicatory proceeding under subchapter 4 or in a licensing action under subchapter 5, including intervention or participation in a judicial review of any such agency actions, for which the intervention or participation is authorized by law or rule.

4. Distribution of funds. After administrative costs, including any salary expenses due to the administrator and other staffing and administrative costs associated with the administration of the fund, revenue credited to the fund must be distributed as follows.

A. Annually, the administrator shall assess the amount of revenue within the fund that is available for distribution during the next calendar year for the purposes identified in subsection 3 and shall establish a formula to determine the amount of that identified revenue that will be made available to each agency and to the Attorney General for distribution. The administrator shall notify each agency and the Attorney General regarding the total funding amount that will be made available to the agency or the Attorney General from the fund in the next calendar year.

B. Each agency and the Attorney General may request a distribution of revenue from the fund up to the total funding amount to support the purposes identified in subsection 3. In reviewing such requests for distribution, the administrator shall ensure that funding priority is given to support actions by persons:

(1) That are not commercial entities *with assets greater than $10 million dollars (as adjusted for inflation by the Fund Administrator)* or entities that are otherwise subject to regulation under law or rule;

(2) Whose interest or position, as determined by the administrator, is not otherwise adequately represented in the rulemaking, proceeding or licensing action; and

(3) Whose interest or position, as determined by the administrator, is primarily focused on protecting or conserving the State's natural resources or environment, protecting the

public health or safety or ensuring freedom of access to public information and government transparency.

C. In collaboration with each agency and the Attorney General, the administrator shall develop and implement measures to educate members of the public and organizations regarding the availability of revenue from the fund to support the purposes identified in subsection 3.

Sec. 5. Office of Attorney General; report. The Office of the Attorney General shall consult with each state agency that issues licenses, permits or other approvals to persons to engage in regulated activities relating to the environment, natural resources, public health and safety and freedom of information and government transparency to identify a mechanism for imposing an additional fee amount for the issuance of those licenses, permits or approvals to support activities authorized under the Fund for Administrative Oversight, established in the Maine Revised Statutes, Title 5, section 11021, in a manner designed to satisfy the anticipated annual demand for distributions from that fund for the agency. The fee amounts identified must be reasonable, must not unreasonably impede the activities of the regulated entity and must be designed to reflect the anticipated cost to the agency of oversight of the regulated activity and addressing any potential violations by the regulated entity, including any costs of corrective action or remediation undertaken by the agency. By January 1, 2026, the office shall submit a report to the Joint Standing Committee on State and Local Government outlining its recommendations for imposing such additional fee amounts, including necessary proposed legislation. The recommendations and proposed legislation must be designed to provide for assessment and collection of the additional fee amounts beginning July 1, 2026 and must provide that of those fee amounts collected, 1/2 must be retained by the state agency assessing the fee to support its oversight and enforcement activities and 1/2 must be transferred to the Fund for Administrative Oversight to support activities under that fund. After reviewing the report, the committee may report out legislation relating to the report to the Second Regular Session of the 132nd Legislature.

SUMMARY

This bill is inspired by provisions in Federal law that have existed for fifty to seventy years to assist Federal offices and agencies and citizens to halt illegal pollution and otherwise enforce environmental law. Those include but are not limited to the Independent Appropriations Act of 1952, Clean Air and Water Acts of 1970 and 72, the Equal Access to Justice Act and the regulations of the Office of Public Participation of the Federal Energy Regulatory Commission. This bill is intended to better enable Maine to protect its people and natural resources from a lack of enforcement or a weakening of standards that had been anticipated and have now been demonstrated at the Federal level in recent months.

This bill amends the Maine Administrative Procedure Act to authorize a person to petition the Commissioner of the Department of the Environment or the Attorney General, as applicable, to enforce an existing law or rule. It also establishes the Fund for Administrative Oversight within the Office of the Attorney General, to be overseen and administered by a fund administrator, appointed by the Governor. Revenue credited to that fund must be distributed to support:

1. Actions by persons seeking to petition or that have petitioned the Commissioner or Attorney General for adoption or modification of rules;

2. Actions by persons seeking to petition or that have petitioned the Commissioner or the Attorney General to initiate a proceeding to enforce an existing law or rule; and

3. Actions by persons seeking to intervene or otherwise participate in a Department of the Environment or Attorney General rulemaking conducted, in an adjudicatory proceeding or in a licensing action.

In distributing funds to such persons, the fund administrator must give priority to persons that are not commercial entities with assets greater than $10 million or entities that are otherwise subject to regulation under law or rule; whose interest or position, as determined by the fund administrator, is not otherwise adequately represented in the rulemaking, proceeding or licensing action; and whose interest or position, as determined by the fund administrator, is primarily focused on protecting or conserving the State's natural resources or environment, protecting the public health or safety or ensuring freedom of access to public information and government transparency.

The bill also directs the Office of the Attorney General to consult with each state agency that issues licenses, permits or other approvals to persons to engage in regulated activities relating to the environment, natural resources, public health and safety and freedom of information and government transparency to identify a mechanism for imposing an additional fee amount for the issuance of those licenses, permits or approvals to support activities under the Fund for Administrative Oversight, in a manner designed to satisfy the anticipated annual demand for distributions from that fund for the agency. The fee amounts identified must be reasonable, must not unreasonably impede the activities of the regulated entity and must be designed to reflect the anticipated cost to the agency of oversight of the regulated entity and addressing any potential violations by the regulated entity, including any costs of corrective action or remediation undertaken by the agency. By January 1, 2026, the office must submit a report to the Joint Standing Committee on State and Local Government outlining its recommendations for imposing such additional fee amounts, including necessary proposed legislation, and the committee may report out related legislation. The recommendations and proposed legislation must be designed to provide for assessment and collection of the additional fee amounts beginning July 1, 2026 and must provide that of those fee amounts collected, 1/2 must be retained by the state agency assessing the fee to support its oversight and enforcement activities and 1/2 must be transferred to the Fund for Administrative Oversight to support activities under that fund.

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Those procedural tools are:

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sized business to petition the DEP to adopt that standard if the underlying state pollution law allows
it.
L.D. 1262 also helps the agencies and the taxpayers of Maine by laying the groundwork for Maine
agencies to assess charges to be paid by those who are permitted to emit pollution, in order to cover
the costs of ensuring compliance or cover the costs of citizens or small businesses using the
provisions of this act. That is in large part what the Independent Offices Appropriations Act (IOAA)
and the Equal Access to Justice Act do at the Federal level.
In conclusion, L.D. 1262 provides an efficient way for citizens, organizations and businesses to help
maintain and improve Mainers' health and environment and protect against federal rollbacks. The
amendment we propose below, clarifies that the bill would apply to environmental standards. We
recommend that the Committee pass L.D. 1262, preferably amended as recommended in the
appended version.
Testimony in Full
We believe our testimony reflects the sentiments of the sponsor when we recommend today that
the scope of this bill be trimmed back to its very core as we suggest in an amendment in the nature
of a substitute included as Appendix 1.
That is, we recommend that the bill be limited to the Department of Environmental Protection's
regulatory functions and to a certain amount of assistance provided by the office of the attorney

general.
We also recommend that small businesses that do not have permits to pollute but may be harmed by polluters be allowed to use the provisions of this bill.
L.D. 1262 as amended in that way would provide to Maine citizens the power to petition the DEP to adopt and enforce standards based on science to protect our air and water just in time to replace some of the protections that the Environmental Protection Agency (EPA) has given Maine that are now being taken away by the Trump Administration.
Those procedural tools are:
1) The ability of citizens or small businesses that do not pollute but may be harmed by pollution to ask the agency that enforces environmental law to improve or enforce the clean air and water standards;
2) The ability of such citizens and businesses to ask a court to act if the agency does not, and
3) The ability of the agency to charge those who are allowed to emit a certain amount of pollution to pay to cover the costs of ensuring compliance or a court to order payment if citizens prove that a violation has occurred.
In less than 100 days since January 20th we have seen the strongest evidence possible of the need for this bill in Maine and in other states around the country. In those days, we have seen President Trump and his appointees and nominees acting at lightning speed to dismantle the agencies and the assistance and funding they usually provide to the states in support of protecting our environment and natural resources, and our access to information among many other important government functions.
The Center for American Progress on April 4, 2025 published this summary (https://www.americanprogress.org/article/the-trump-administration-has-invited-power-plants-to-emit-more-toxic-pollution-in-a-giveaway-to-corporate-polluters/) of a report by the New York Times and related sources:
On March 27, 2025, The New York Times reported that the Trump administration has invited coal- and oil-fired power plants and other sources of toxic air pollution to send an email requesting exemptions from clean air regulations. On a dedicated webpage, the U.S. Environmental Protection Agency (EPA) wrote that it had “set up an electronic mailbox to allow the regulated community to request a presidential exemption under section 112(i)(4) of the Clean Air Act” by March 31, 2025. Already, the nation’s most-polluting coal-burning power plant is known to have made a request.
Section 112(i)(4) is a little-known provision that allows the president to exempt entities from Clean Air Act emissions standards if a) the technology required to meet current emissions standards is not available and b) an exemption is in the national security

interest
of the United States. These requirements cannot be met by existing facilities, and in any
case, the administration has provided insufficient time or process to prove they are fulfilled.

Though President Donald Trump has promised to deliver the
“cleanest air and water ,” this
new action demonstrates his administration’s true goal of prioritizing corporate polluters
over Americans and their health.

And as the newspaper The Guardian put it:

A push by Donald Trump’s administration to repeal a barrage of clean air and water regulations may deal a severe blow to US public health, with a Guardian analysis finding that
the targeted rules were set to save the lives of nearly 200,000 people in the years ahead.

Last week, Trump’s Environmental Protection Agency (EPA) provoked uproar by unveiling a
list of 31 regulations it will scale back or eliminate, including rules limiting harmful air
pollution from cars and power plants; restrictions on the emission of mercury, a neurotoxin;
and clean water protections for rivers and streams.

The Center for American Progress calculated the funding for clean air and water that the States are
going to lose and cited multiple court orders in place that may or may not prevent that harm in the
long run:

All people—regardless of income, ZIP code, or race—have a fundamental right to breathe
clean air, drink safe water, and live in healthy and safe communities. To further this goal,
Congress funded environmental and public health protections through the Inflation Reduction Act (IRA) and Infrastructure Investment and Jobs Act (IIJA). These protections
include funds to help states and cities monitor, reduce, and clean up dangerous pollution;
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increase access to clean and affordable energy; and upgrade home energy efficiency to save
families money on their electricity bills. IRA and IIJA funds also help state and local governments expand access to clean and safe water and prepare for increasingly common
extreme weather events caused by climate change.

Since taking office, the Trump administration has canceled funding for many of these programs—despite multiple court orders to reinstate them. In March, the administration
announced that it had canceled 400 grants totaling $1.7 billion aimed to improve air and
water quality and prepare communities for more extreme weather events, along with $20
billion in grants to reduce climate and local air pollution and support affordable clean energy. Denying states, cities, and communities across the country funds to implement
projects that reduce pollution and energy costs and protect them from more extreme weather puts Americans’ health and jobs at risk while driving up household energy bills.

Most states rely on EPA standards as their own minimum standards while being free to adopt stricter measures if they so choose. That is the way these Federal laws work but it is especially important in Maine. Being downwind of air pollution from the lower 48 states, Maine has every reason to at least keep those standards in place while it decides which ones it should improve. In fact, Maine's Department of Environmental Protection has on its website an impressive list of cooperative programs and plans that it creates with the Federal Environmental Protection Agency so that they can cooperate in enforcing the clean air and water acts and other basic environmental laws.

L.D. 1262 is designed to protect against Federal roll backs of environmental protection. The most essential of those federal statutes were co-authored by none other than Maine's famous son, Senator Edmund Muskie. He made sure that the Clean Air Act of 1970, the Clean Water Act of 1972, among other laws had citizen suit provisions, so that citizens could stand in for the EPA and the Department of Justice when presidents like Richard Nixon would not enforce the law or allow their agencies to do so.

By providing to citizens the power to help the agencies and the courts to carry out the will of the legislature, Maine's Senator Muskie hoped to protect the people of Maine and the nation from administrations that were not eager to enforce the law. That is why Muskie put them into the Federal laws he co-authored during the Nixon administration. Many Mainers experienced a state administration's unwillingness to require cleaner air and water during the LePage administration.

Therefore, if a Federal pollution standard disappears and the DEP does not move to adopt it under state law, L.D. 1262 should provide a way for a public interest organization to petition the DEP to adopt that standard if the underlying state pollution law allows it.

This bill would not change the underlying substantive law. It simply provides an efficient way to step in to apply that law in regulations if an agency for whatever reason, does not.

Without citizen suit provisions setting deadlines and offering to reimburse those who stand in successfully for an over-stretched or unwilling agency we might lose the quality of life that our legislators intended to guarantee for us. But, such protective measures take time and brave independent judges to make them work. Furthermore, Federal courts oversee Federal agencies in general while state courts oversee state agencies so it is important to create these tools at the state level if our states are going to have to do more to protect themselves and their citizens.

What may not be apparent in the bill itself or in the summary of it is that it is based

entirely on
federal statutes that have served important purposes for many years.
Those Citizen suit provisions generally allow citizens to sue to enforce these basic environmental
laws, and to be awarded market rate fees to cover the cost of their experts and their attorneys when

they prevail in court. That is because they have done a public service acting as private attorneys
general and should not have to bear the costs for doing that on behalf of all citizens.
As one public interest law center puts it:
“The citizen suit provisions of the Clean Air Act, Clean Water Act, and more than a dozen other
environmental statutes are powerful tools in the fight against illegal pollution. Plaintiffs in citizen
suits can ask the court to impose civil penalties for a source’s past violations, payable to the
government. They can also request injunctive relief, typically an order from the court requiring a
company to take specific actions to correct compliance problems and to avoid future violations.
And when settlements occur, funds often go to projects in the affected community. (https://
www.nelc.org/get-involved/citizen-enforcement/)”
In 1980 Congress adopted an across-the-board approach that also included small businesses
among those who could be reimbursed for their reasonable expenses in challenging agencies. The
Congressional Research Service describes that provision of the Equal Access to Justice Act:

> The EAJA permits recovery of fees by both organizations and individuals, but Sections 504 and 2412(d) limit the parties that may receive a fee award. First, those provisions only allow for one-way fee shifting: “a prevailing party other than the United States” may receive attorney’s fees, while the federal government may not. Second, only an individual with a net worth of $2 million or less, or the owner of a business or other organization worth $7 million or less and with no more than 500 employees may recover an award of attorney’s fees under Sections 504 and 2412(d). Nonprofits exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are not subject to the net worth cap.

We recommend that the outdated asset and fee limits be updated and set to be adjusted by the
director of the fund according to the cost of living or prevailing market rates for attorneys and
expert witnesses of the kind participating in such proceedings and provide suggested language to
do that in the appended draft.

Another famous son of Maine, Senator George Mitchell, succeeded Senator Muskie in the
chairmanship of the Senate Environment and Public Works Committee. In that position, he
defended those same statutes from attempts to weaken them and supported important practical
improvements in them. One amendment to the Endangered Species Act, adopted in

1988, is
somewhat similar to part of this bill. It was the addition of an awards provision that would, subject
to appropriations, devote the proceeds of penalties back to the enforcement of the statute rather
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than directly back to the general fund of the U.S. Treasury. There is a water quality research center
at the University of Maine named after Senator Mitchell, whose findings could form the basis of
improved regulations to keep up with new threats from substances like PFAS.

L.D. 1262 helps the agencies and the taxpayers of Maine by laying the groundwork for the agencies
to require those who require permits to limit their pollution to cover the costs of enforcement. That
is what the Independent Offices Appropriations Act (IOAA) of 1952 does at the Federal level. That
law gives federal agencies the authority to levy reasonable fees to cover the cost of their permitting,
oversight, and enforcement of the laws. That is an entirely appropriate way of internalizing the cost
of providing those goods and services that may create pollution or other harm to public health or
resources, while the permittees are conducting their permitted business. That provides all
concerned with an incentive to minimize pollution or other violations of law, making the jobs of the
agencies easier.

One used to be able to read about the administration of the IOAA in reports by the congressional
Government Accountability Office (GAO). Those GAO studies can guide the state of Maine as it
creates the plans for a similar program through the provision in this bill requesting that the
attorney general inform the legislature of options for such a program. But some of those are no
longer posted. Here a non-profit organization, Ballotpedia, summarizes one such survey by the
GAO:

The Independent Offices Appropriations Act (IOAA) grants broad authority to federal agencies to assess user fees. The fees must be fair and based on the costs to the government
and the value of the service provided, among other considerations. Fees collected are deposited in the general fund of the U.S. Treasury and are not directly available to the agency.[7]
The IOAA, codified at 31 U.S. Code § 9701, provides the following guidance for agencies:[8]
“ (a) It is the sense of Congress that each service or thing of value provided by an agency (except
a mixed-ownership Government corporation) to a person (except a person on official business
of the United States Government) is to be self-sustaining to the extent possible.
(b) The head of each agency (except a mixed-ownership Government corporation) may
prescribe regulations establishing the charge for a service or thing of value provided by the
agency. Regulations prescribed by the heads of executive agencies are subject to

policies
prescribed by the President and shall be as uniform as practicable. Each charge shall be—
(1) fair; and
(2) based on—
(A) the costs to the Government;
(B) the value of the service or thing to the recipient;
(C) public policy or interest served; and
(D) other relevant facts.[4]
”
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Impact
Agency reliance on user fees has increased since the passage of the IOAA, a trend that the
Congressional Budget Office attributes to various budget sequestration and reconciliation
measures that have motivated agencies to seek out new funding sources. Many federal agencies today depend on user fees to fund services, according to a report by the U.S. Department of Agriculture's (USDA) Economic Research Service. In 2007, a GAO report
found that total user fee collections across federal agencies amounted to $233 billion. In a
review of 21 federal agencies, the USDA's report found that nine agencies relied on user fees
to make up at least 80 percent of agency funding.[9][10][7]
The following table provides examples of user fees charged by federal agencies:[9][7]
Examples of user fees charged by federal agencies, 2018
Federal agency User fee(s)
Food and Drug Administration Application fees for new drugs, annual fees on existing drugs,
annual fees on manufacturing plants
National Marine Fisheries
Service
Inspection fees
Nuclear Regulatory
Commission
Inspection fees, license fees, and annual fees
to all active entities
National Park Service Entrance fees, camping fees
U.S. Postal Service Postage fees
U.S. Citizenship and
Immigration Services
Fees for immigrant and naturalization benefit applications
USDA’s Food Safety and
Inspection Service
Fees for meat, poultry, and egg products overtime inspection
services
https://ballotpedia.org/
Independent_Offices_Appropriations_Act_of_1952#:~:text=”-,Impact,U.S.
%20Citizenship%20and%20Immigration%20Services
Pollution contaminated many areas before Federal environmental law:

In my early childhood in the 1950s, my father worked for the Goodyear Atomic Corporation
and we lived in Chillicothe, Ohio. There we were surrounded by two dangerous forms of
pollution. The first was the radioactive dust from the Goodyear Atomic Plant, where the

Federal Government paid Goodyear to enrich nuclear material for atomic bombs. My father did not work on the shop floor, but the men who did were not allowed to bring their boots into their own homes, but had to tie them by the shoe strings to the porch lights before they came into their own houses because otherwise they would poison their families with radioactive material. I would look up and see those boots over my head and wonder how much radioactive dust had fallen onto their front porch when I walked over to visit a friend

whose father worked on that factory floor.

The more noticeable pollution was from the paper factory nearby. The yellow smoke filled the sky on some days and its stench was unavoidable for much of the year.

In the summer of 1960 we loaded up our new station wagon and a U-Haul trailer and moved to Bangor Maine. On the way, we drove past Lake Erie. It looked and smelled like a dead zone. My Dad explained that the pollution that had been poured into the Lake had killed most of the fish and other living things in the Lake. Once we arrived in Maine the air was cleaner and so was the water as far as we could tell.

Most people alive today do not appreciate how bad the pollution once was, yet now President Trump and his team are dismantling the agency that has protected us all for decades. We need to step up and protect ourselves.

Thank you.

Appendix 1

An amendment in the nature of a substitute for:

An Act to Improve Government Transparency and Accountability by Establishing a Process to Allow a Person to Require the State to Enforce Certain Laws and Rules

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §8055, sub-§3, as amended by PL 1985, c. 506, Pt. A, §4, is further amended to read:

3. Receipt of petition; judicial review. Within 60 days after receipt of a petition, the Commissioner of the Department of the Environment or the Attorney General, as appropriate, shall either notify the petitioner in writing of his or her denial, stating the reasons therefor for the denial, or initiate appropriate rule-making proceedings. Whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, the agency shall initiate appropriate rulemaking rule-making proceedings within 60 days after receipt of the petition.

The petition must be verified and certified in the same manner provided in Title 21A, section 354, subsection 7, prior to its presentation to the agency. If, within 60 days after receipt of a

petition, the agency fails to notify the petitioner in writing of its denial or to initiate appropriate rule-making proceedings, or if the agency has initiated rule-making proceedings the

petitioner
believes to be inconsistent with the submitted petition, the person that submitted the petition
may seek appropriate judicial review of the agency's actions consistent with section 8058 or, as
applicable, subchapter 7.
Sec. 2. 5 MRSA §9051, sub-§1, as amended by PL 2005, c. 61, §1, is further amended to read:
1. Adjudicatory proceeding. In any adjudicatory proceedings of the Department of Environmental Protection or the Attorney General, except including those proceedings initiated
pursuant to section 9051-B, but excluding those proceedings involving correctional facilities,
the Workers' Compensation Board, the Maine Motor Vehicle Franchise Board or the State Parole
Board, the procedures of this subchapter apply.
Sec. 3. 5 MRSA §9051-B is enacted to read:
§9051-B. Proceeding to enforce certain existing laws or rules
In accordance with the provisions of this section and this subchapter, a person may petition an
agency or the Attorney General, as applicable, to enforce an existing law or rule relating to
regulation of the environment, natural resources, public health or safety or freedom of information and government transparency.
1. Form; content. The Commissioner of the Department of the Environment and the Attorney
General shall designate the form for petitions under this section and the procedure for their
submission, consideration and disposition. A petition submitted by a person under this section
must, at a minimum, provide sufficient information for the agency or the Attorney General to
identify the existing law or rule the person is seeking enforcement of and the purposes for
which the person is seeking that enforcement.
2. Receipt of petition; judicial review. Within 60 days after receipt of a petition, the Commissioner or the Attorney General shall either notify the petitioner in writing of its denial,
stating the reasons for the denial, or initiate an appropriate proceeding to enforce an existing
law or rule as specified in the petition. If, within 60 days after receipt of a petition, the Commissioner or the Attorney General fails to notify the petitioner in writing of its denial or to
initiate appropriate proceedings, or if the Department or the Attorney General has initiated a
proceeding the petitioner believes to be inconsistent with the submitted petition, the person
that submitted the petition may seek appropriate judicial review of the Department’s or
Attorney General's actions consistent with subchapter 7, as applicable.
Sec. 4. 5 MRSA c. 375, sub-c. 8 is enacted to read:
SUBCHAPTER 8
FUND FOR ADMINISTRATIVE OVERSIGHT
§11021. Fund for Administrative Oversight established; administration
This section establishes and governs the administration of the Fund for Administrative Oversight.
1. Fund established; sources of fund. The Fund for Administrative Oversight, referred to in

this section as "the fund," is established within the Office of the Attorney General as a nonlapsing, dedicated fund, to be administered by the administrator, for the purposes described in subsection 3. The fund may accept revenue from grants, bequests, gifts or contributions from any source, public or private, including any sums that may be directed by law or appropriated by the Legislature, transferred to the fund from time to time by the State Controller or dedicated to the fund.

2. Fund administrator. The fund is administered by a fund administrator, referred to in this section as "the administrator," who is appointed by the Governor for a 4-year term and may be reappointed by the Governor to additional 4-year terms.

3. Fund purposes. Revenue credited to the fund is distributed in the manner described in subsection 4 for the following purposes:

A. To support actions by persons seeking to petition or that have petitioned an agency for adoption or modification of rules pursuant to section 8055, including persons seeking judicial review of an agency's actions in response to a petition;

B. To support actions by persons seeking to petition or that have petitioned an agency or the Attorney General to initiate a proceeding to enforce an existing law or rule pursuant to section 9051-B, including a person seeking judicial review of an agency or the Attorney General's actions in response to a petition; and

C. To support actions by persons seeking to intervene or otherwise participate in agency rulemaking conducted under subchapter 2 or 2-A, in an adjudicatory proceeding under subchapter 4 or in a licensing action under subchapter 5, including intervention or participation in a judicial review of any such agency actions, for which the intervention or participation is authorized by law or rule.

4. Distribution of funds. After administrative costs, including any salary expenses due to the administrator and other staffing and administrative costs associated with the administration of the fund, revenue credited to the fund must be distributed as follows.

A. Annually, the administrator shall assess the amount of revenue within the fund that is available for distribution during the next calendar year for the purposes identified in subsection 3 and shall establish a formula to determine the amount of that identified revenue that will be made available to each agency and to the Attorney General for distribution. The administrator shall notify each agency and the Attorney General regarding the total funding amount that will be made available to the agency or the Attorney General from the fund in the next calendar year.

B. Each agency and the Attorney General may request a distribution of revenue from the fund up to the total funding amount to support the purposes identified in subsection 3. In reviewing such requests for distribution, the administrator shall ensure that funding

priority is given to support actions by persons:
(1) That are not commercial entities with assets greater than $10 million dollars (as adjusted for inflation by the Fund Administrator) or entities that are otherwise subject to
regulation under law or rule;
(2) Whose interest or position, as determined by the administrator, is not otherwise adequately represented in the rulemaking, proceeding or licensing action; and
(3) Whose interest or position, as determined by the administrator, is primarily focused
on protecting or conserving the State's natural resources or environment, protecting the
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public health or safety or ensuring freedom of access to public information and government transparency.
C. In collaboration with each agency and the Attorney General, the administrator shall develop and implement measures to educate members of the public and organizations regarding the availability of revenue from the fund to support the purposes identified in
subsection 3.
Sec. 5. Office of Attorney General; report. The Office of the Attorney General shall consult
with each state agency that issues licenses, permits or other approvals to persons to engage in
regulated activities relating to the environment, natural resources, public health and safety and
freedom of information and government transparency to identify a mechanism for imposing an
additional fee amount for the issuance of those licenses, permits or approvals to support
activities authorized under the Fund for Administrative Oversight, established in the Maine
Revised Statutes, Title 5, section 11021, in a manner designed to satisfy the anticipated annual
demand for distributions from that fund for the agency. The fee amounts identified must be
reasonable, must not unreasonably impede the activities of the regulated entity and must be
designed to reflect the anticipated cost to the agency of oversight of the regulated activity and
addressing any potential violations by the regulated entity, including any costs of corrective
action or remediation undertaken by the agency. By January 1, 2026, the office shall submit a
report to the Joint Standing Committee on State and Local Government outlining its recommendations for imposing such additional fee amounts, including necessary proposed
legislation. The recommendations and proposed legislation must be designed to provide for
assessment and collection of the additional fee amounts beginning July 1, 2026 and must
provide that of those fee amounts collected, 1/2 must be retained by the state agency assessing
the fee to support its oversight and enforcement activities and 1/2 must be transferred to the
Fund for Administrative Oversight to support activities under that fund. After reviewing the
report, the committee may report out legislation relating to the report to the Second Regular

Session of the 132nd Legislature.

SUMMARY

This bill is inspired by provisions in Federal law that have existed for fifty to seventy years to assist Federal offices and agencies and citizens to halt illegal pollution and otherwise enforce environmental law. Those include but are not limited to the Independent Appropriations Act of 1952, Clean Air and Water Acts of 1970 and 72, the Equal Access to Justice Act and the regulations of the Office of Public Participation of the Federal Energy Regulatory Commission.

This bill is intended to better enable Maine to protect its people and natural resources from a lack of enforcement or a weakening of standards that had been anticipated and have now been demonstrated at the Federal level in recent months.

This bill amends the Maine Administrative Procedure Act to authorize a person to petition the Commissioner of the Department of the Environment or the Attorney General, as applicable, to enforce an existing law or rule. It also establishes the Fund for Administrative Oversight within the Office of the Attorney General, to be overseen and administered by a fund administrator, appointed by the Governor. Revenue credited to that fund must be distributed to support:

1. Actions by persons seeking to petition or that have petitioned the Commissioner or Attorney General for adoption or modification of rules;

2. Actions by persons seeking to petition or that have petitioned the Commissioner or the Attorney General to initiate a proceeding to enforce an existing law or rule; and

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3. Actions by persons seeking to intervene or otherwise participate in a Department of the Environment or Attorney General rulemaking conducted, in an adjudicatory proceeding or in a licensing action.

In distributing funds to such persons, the fund administrator must give priority to persons that are not commercial entities with assets greater than $10 million or entities that are otherwise subject to regulation under law or rule; whose interest or position, as determined by the fund administrator, is not otherwise adequately represented in the rulemaking, proceeding or licensing action; and whose interest or position, as determined by the fund administrator, is primarily focused on protecting or conserving the State's natural resources or environment, protecting the public health or safety or ensuring freedom of access to public information and government transparency.

The bill also directs the Office of the Attorney General to consult with each state agency that issues licenses, permits or other approvals to persons to engage in regulated activities

relating
to the environment, natural resources, public health and safety and freedom of information and
government transparency to identify a mechanism for imposing an additional fee amount for
the issuance of those licenses, permits or approvals to support activities under the Fund for
Administrative Oversight, in a manner designed to satisfy the anticipated annual demand for
distributions from that fund for the agency. The fee amounts identified must be reasonable,
must not unreasonably impede the activities of the regulated entity and must be designed to
reflect the anticipated cost to the agency of oversight of the regulated entity and addressing any
potential violations by the regulated entity, including any costs of corrective action or
remediation undertaken by the agency. By January 1, 2026, the office must submit a report to
the Joint Standing Committee on State and Local Government outlining its recommendations for
imposing such additional fee amounts, including necessary proposed legislation, and the
committee may report out related legislation. The recommendations and proposed legislation
must be designed to provide for assessment and collection of the additional fee amounts
beginning July 1, 2026 and must provide that of those fee amounts collected, 1/2 must be
retained by the state agency assessing the fee to support its oversight and enforcement
activities and 1/2 must be transferred to the Fund for Administrative Oversight to support
activities under that fund.