



### **Testimony in Opposition to LD 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 the distinguished members of the Committee on Judiciary, 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, nonprofit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify in opposition to LD 1262.

While Maine Policy Institute typically supports efforts to limit unchecked administrative power and enhance government transparency, LD 1262 takes a well-intentioned concept and applies it in a way that would undermine agency discretion, promote regulatory capture by interest groups, and impose additional costs on the state without necessarily improving public outcomes.

### **Over-Empowering Special Interests**

At its core, LD 1262 would create a mechanism by which any person—regardless of residency, expertise, or proximity to the alleged harm—could compel state agencies or the Attorney General to enforce a law or rule, irrespective of the agency’s priorities or available resources. It also establishes a new taxpayer-funded bureaucracy, the “Fund for Administrative Oversight,” explicitly designed to empower these petitioners to sue the state or intervene in rulemaking.

This proposal risks creating a publicly funded pipeline for well-organized political advocacy groups to pressure state regulators into taking action that may be politically motivated, economically harmful, or otherwise contrary to the agency’s broader statutory mandate. The concept of activist groups threatening to sue Maine for not enforcing their interpretation of laws or rules is not a theoretical concern—it is a reality already taking place.

In 2023, the Sierra Club, Conservation Law Foundation, and other activist groups filed a regulatory petition with the State of Maine’s Department of Environmental Protection, proposing controversial electric vehicle mandates statewide<sup>1</sup> for failing to meet greenhouse gas reduction goals set under state law. After the agency refused to pass that proposal, due to widespread public backlash, the Sierra Club sued the state of Maine, a lawsuit which is still ongoing.<sup>2</sup> The lawsuit seeks to compel the Department of Environmental Protection to adopt more stringent climate rules, irrespective of

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<sup>1</sup> <https://www.clf.org/wp-content/uploads/2023/06/ACT-FINAL-PETITION-EXECUTED.pdf>

<sup>2</sup> <https://themainemonitor.org/maine-ev-lawsuit/>



legislative deliberation or the economic tradeoffs such policies might require. LD 1262 would supercharge this activism by enabling groups like the Sierra Club to receive state funds to subsidize legal actions handcuffing the agencies they seek to control.

### **Undermining Regulatory Discretion and Federal Funding**

State agencies must weigh numerous factors when deciding whether or how to enforce a given rule, including staff capacity, public benefit, and regulatory impact. In some instances, agencies may prudently decline to enforce a rule to preserve broader legal flexibility or in anticipation of changing federal guidance.

For example, specific environmental or education rules adopted under the current administration could directly conflict with federal policy should the federal executive decide that Maine's laws conflict with federal statutes. If Maine agencies are forced to enforce rigid rules contradicting federal directives, the state could risk losing billions of dollars in federal aid tied to education, transportation, or Medicaid services. The discretion to defer or limit enforcement is not a loophole—it is an essential tool for intergovernmental navigation and sound governance, and a tool for state governments to avoid losing significant federal funding.

### **Imposing New Costs and Bureaucracy**

LD 1262 not only mandates state agencies respond to citizen enforcement petitions but also imposes new fees on regulated entities to fund the litigation that may be brought against them. This sets a dangerous precedent: forcing the general public, as well as potentially every licensed entity or individual in the state, to bankroll a small group of political activists, while making state agencies subservient to whichever interest group is best funded or most politically motivated.

### **Conclusion**

LD 1262 is not a measure to improve transparency or accountability—it is a tool to erode public servants' discretion, expand litigation, and fund activism through state revenues. Rather than enhancing public trust, it will overwhelm agencies with legal demands, chill reasonable discretion, and weaponize the rulemaking process.

Maine's regulatory state is imperfect, but the answer is not to further entangle it in lawsuits and political pressure. We urge the committee to vote "Ought Not to Pass" on LD 1262 for these reasons. Thank you for your consideration.