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Maine State Legislature
Committee on State and Local Government
February 12, 2025

Testimony of Conservation Law Foundation in Opposition to L.D. 236,
An Act to Provide Legislative Oversight of the Rule-making Petition Process

Chair Baldacci, Chair Salisbury, and members of the Committee on State and Local Government, my name is Emily Green and I am the Director of Clean Mobility at the Conservation Law Foundation (CLF). CLF appreciates the opportunity to submit this testimony in opposition to L.D. 236.

CLF is a member-supported nonprofit advocacy organization working to conserve natural resources, protect public health, and build healthy communities in Maine and throughout New England. In Maine for almost four decades, CLF works to ensure that laws and policies are developed, implemented and enforced that protect and restore our natural resources; are good for Maine's economy and environment; and equitably address the climate crisis.

CLF urges the committee to vote ought not to pass on L.D. 236 because the superfluous legislative review contemplated will encumber an important process for public participation, without benefit. L.D. 236 proposes a solution in want of a problem.

> *Legislative review is properly reserved for rules the Legislature has determined are expected to be "controversial" or to have a "major impact on the regulated community"*

For nearly thirty years, state law has required Maine's Legislature to designate all new rules as either routine technical or major substantive. 5 M.R.S. § 8071(1). Identifying rules as major substantive reflects the Legislature's determination that the rules entail "significant agency discretion or interpretation" or are likely to result in significant costs. *Id.* § 8071(2)(B). The process at the administrative level is nearly the same[1] for both categories of rules. *Id.* §§ 8071(3), 8072. But the agency may not finally adopt major substantive rules without legislative review and authorization. *Id.* § 8072.

This rulemaking dichotomy reflects an appropriate and long-standing balance between "provid[ing] for maximum agency flexibility in the adoption of rules," and retaining "legislative oversight" over rules the Legislature anticipates will be "controversial or [] have a major impact on the regulated community." *Id.* § 8071.

[1] Except that for a routine technical rulemaking, an agency "may" hold a public hearing, but it "must" conduct a public hearing if the Legislature has deemed the rule major substantive. 5 M.R.S. § 8052(1).

Initiating a rulemaking due to a petition does not make a rule "controversial" or create a "major impact on the regulated community"

The rationale for subjecting certain rules to legislative review does not and should not change simply because of *why* a rule was initiated.

There are myriad reasons why an agency might initiate a rulemaking, including the filing of a rulemaking petition. Regardless of the motive, all rulemakings must adhere to strict processes to ensure the agency's result is well-reasoned and informed by the public.[2] Beyond the prompt for rulemaking initiation, the rulemaking process under 5 M.R.S. § 8055 is no different than the process for any other rulemaking: the agency is required to give notice to the public, *id.* § 8052(1); the agency may (or must, in certain circumstances) hold a public hearing, *id.*[3]; the agency is required to consider all relevant information available to it, including "economic, environmental, fiscal and social impact analyses and statements and arguments filed," *id.* § 8052(4). If adopting the rule, the agency is required to adopt a "written statement explaining the factual and policy basis for the rule," addressing the "specific comments and concerns" received from members of the public, and stating "its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule." *Id.* § 8052(5).

In short: the fact that an agency initiates a rulemaking due to the filing of a petition has no bearing on the process, content, or outcome of a rulemaking. There is no reason for legislative review of a regulation that the Legislature has already deemed does not warrant this extra layer of oversight, simply because a petition kicked off the extensive administrative process.

L.D. 236 could thwart public participation and engagement in the rulemaking process

The impact, on the other hand, could be severe: delaying already-lengthy processes (particularly given the legislature is only in session during certain months of the year); creating unnecessary work for legislators; imposing extra procedural burdens on Maine people; and ultimately,

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[2] The Congressional Research Service has explained how the federal rulemaking petition process interacts with rulemaking procedures:

> If an agency grants a petition requesting that it issue, amend, or repeal a rule, any relevant procedural requirements for rulemaking or other type of action would still apply. . . In other words, a rulemaking action is not subject to, or exempt from, any procedural requirements as a result of the action having been taken pursuant to a petition under the APA—it does not provide an alternative means for an agency to take an action without going through otherwise-required procedures. Rather, the granting of the petition merely serves as a starting point for the agency to take an action.

Congressional Research Service, *Petitions for Rulemaking: An Overview* (Jan. 23, 2020), available at https://crsreports.congress.gov/product/pdf/R/R46190/1, at 4 (internal citations omitted).

[3] *See* supra n. 1.

potentially chilling the exercise of Mainers' procedural rights.[4] All to give the legislature an extra opportunity to overturn what would otherwise be a *routine technical rule* simply because it results from a rulemaking petition.

The genesis of this bill was not an onslaught of rulemaking petition filings—rather, they are exceedingly rare, and hardly—*if* ever[5]—result in an agency adopting a rule. L.D. 236 comes before the committee because of two rulemaking petitions filed under 5 M.R.S. § 8055 at the Department of Environmental Protection for adoption of the Advanced Clean Trucks Program and Advanced Clean Cars II Program rules in 2023. The Department initiated routine technical rulemakings under the Department's authority to adopt vehicle emissions rules in 38 M.R.S. §§ 576-A, 585, 585-A and 585-D. At the time, the Legislature had not designated such rules as major substantive, despite amending the applicable rulemaking authorizations multiple times over the years. All prior iterations of analogous rules had proceeded as routine technical.

To subject future such rulemakings to legislative review, the legislature could—and did—change the applicable statute to identify the rules as major substantive. P.L. 2023, ch. 624, § 1.

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Thank you for the opportunity to testify in opposition to L.D. 236, which would impede public process with no public benefit. We urge the Committee to vote ought not to pass.

[4] The right to petition an agency for adoption of a rule is "essentially [a restatement of] the right to petition the government established by the U.S. Constitution, which can be traced as far back as the Magna Carta and Declaration of Independence." Congressional Research Service, *Petitions for Rulemaking: An Overview* (Jan. 23, 2020), available at https://crsreports.congress.gov/product/pdf/R/R46190/1, at 2.

[5] It is very difficult to track rulemakings initiated by petition in Maine. That said, we are not aware of any rule that was adopted as a result of a rulemaking petition.