

MAINE STATE LEGISLATURE

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S/K
ROFS

L.D. 251

Date: 6-1-21

(Filing No. H-289)

ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 172, L.D. 251, "An Act Regarding Public Utility Assessments, Fees and Penalties"

Amend the bill in section 1 in subsection 1 by inserting after paragraph E the following:

'F. The portion of the assessment applicable to investor-owned utilities and consumer-owned utilities within each category of public utility, as determined by the commission under this subsection, must be allocated to each utility based on a 3-year rolling average of revenue reported by the utility.'

Amend the bill in section 2 in subsection 8 by inserting after paragraph C-1 the following:

'E. The portion of the assessment applicable to investor-owned utilities and consumer-owned utilities within each category of public utility, as determined by the Public Advocate under this subsection, must be allocated to each utility based on a 3-year rolling average of revenue reported by the utility.'

Amend the bill by striking out all of section 3 and inserting the following:

'Sec. 3. 35-A MRSA §120, sub-§2-A is enacted to read:

2-A. Filing fees and penalties; legislation. Any filing fees or penalties collected in the previous year under this Title that have not been adjusted in the previous 5 years. For filing fees or penalties reported pursuant to this subsection, the commission shall submit, along with the annual report, information regarding the dollar value of the filing fee or penalty adjusted for inflation based on the Consumer Price Index, as defined in Title 5, section 17001, subsection 9. After receiving the annual report, the committee may report out a bill to adjust for inflation any filing fee or penalty provided in the report.'

Amend the bill by striking out all of section 5 and inserting the following:

'Sec. 5. 35-A MRSA §708, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

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4. Filing fee. Within 30 days after the application for approval of a reorganization is filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee not to exceed \$50,000, 5/100 of 1% of the transaction value as determined by the commission if the commission determines that the application may involve issues ~~which will that would~~ necessitate significant additional costs to the commission, except that, if a reorganization would result in the transfer of ownership and control of a public utility or the parent company of a public utility, the commission shall order the applicant to pay to the commission a filing fee in an amount equal to 5/100 of 1% of the transaction value as determined by the commission. The applicant may request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days. Notwithstanding any other provision of law, filing fees paid as required in this subsection ~~shall~~ must be segregated, apportioned and expended by the commission for the purposes of processing the application. Any portion of the filing fee that is received from an applicant and is not expended by the commission to process the application ~~shall~~ must be returned to the applicant.

Sec. 6. 35-A MRSA §759, first ¶, as enacted by PL 1995, c. 348, §1, is amended to read:

The provisions of this chapter are considered safety and health standards of the State. A person who causes, permits or allows work or other activity in violation of the provisions of this chapter may be assessed a civil penalty not exceeding ~~\$1,000~~ \$1,700 for each day the violation continues.

Sec. 7. 35-A MRSA §1508-A, sub-§1, as amended by PL 2011, c. 623, Pt. B, §5, is further amended to read:

1. Penalty. Unless otherwise specified in law, the commission may, in an adjudicatory proceeding, impose an administrative penalty as specified in this section.

A. For willful violations of this Title, a commission rule or a commission order by a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or a competitive electricity provider, the commission may impose an administrative penalty for each violation in an amount that does not exceed ~~\$5,000~~ \$5,800 or .25% of the annual gross revenue that the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or the competitive electricity provider received from sales in the State, whichever amount is lower. Each day a violation continues constitutes a separate offense. The maximum administrative penalty for any related series of violations may not exceed ~~\$500,000~~ \$575,000 or 5% of the annual gross revenue that the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or ~~the~~ competitive electricity provider received from sales in the State, whichever amount is lower.

B. For a violation in which a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or a competitive electricity provider was explicitly notified by the commission that it was not in compliance with the requirements of this Title, a commission rule or a commission order and that failure to comply could result in the imposition of administrative penalties, the commission may impose an administrative penalty that does not exceed ~~\$500,000~~ \$575,000.

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1 C. The commission may impose an administrative penalty in an amount that does not
2 exceed ~~\$1,000~~ \$1,200 on any person that is not a public utility, voice service provider,
3 dark fiber provider, wholesale competitive local exchange carrier or a competitive
4 electricity provider and that violates this Title, a commission rule or a commission
5 order. Each day a violation continues constitutes a separate offense. The
6 administrative penalty may not exceed ~~\$25,000~~ \$29,000 for any related series of
7 violations.

8 D. In addition to the administrative penalties authorized by this subsection, the
9 commission may require disgorgement of profits or revenues realized as a result of a
10 violation of this Title, a commission rule or a commission order.'

11 Amend the bill by striking out all of section 7 and inserting the following:

12 'Sec. 7. 35-A MRSA §2706, sub-§3, as enacted by PL 2007, c. 553, §2, is amended
13 to read:

14 3. **Civil penalty.** A civil penalty not to exceed ~~\$2,500~~ \$3,000 due and payable to the
15 utility for each violation of this section.

16 Sec. 8. 35-A MRSA §2707, sub-§3, as enacted by PL 2007, c. 553, §3, is amended
17 to read:

18 3. **Civil penalty.** A civil penalty not to exceed ~~\$2,500~~ \$3,000 due and payable to the
19 utility for each violation of this section.

20 Sec. 9. 35-A MRSA §2708, sub-§3, as enacted by PL 2007, c. 553, §4, is amended
21 to read:

22 3. **Civil penalty.** A civil penalty not to exceed ~~\$2,500~~ \$3,000 due and payable to the
23 utility for each violation of this section.

24 Sec. 10. 35-A MRSA §3206-A, sub-§1, as amended by PL 2003, c. 505, §30, is
25 further amended by amending the first blocked paragraph to read:

26 The commission may impose administrative penalties of up to ~~\$100,000~~ \$143,000 for a
27 violation of section 3205 or section 3206 or any rule adopted by the commission pursuant
28 to those sections. Each day of a violation constitutes a separate offense. In addition, the
29 commission may require disgorgement of profits or revenues realized as a result of a
30 violation of section 3205 or section 3206 or any rule adopted by the commission pursuant
31 to those sections.

32 Sec. 11. 35-A MRSA §3306, sub-§6, as amended by PL 1999, c. 398, Pt. A, §80
33 and affected by §§104 and 105, is further amended to read:

34 6. **Filing fee.** The petitioner or petitioners requesting commission intercession shall
35 pay to the commission an amount equal to ~~\$1,000~~ \$1,600 per megawatt of capacity of the
36 facility in issue. The petitioner or petitioners may request the commission to waive all or
37 part of the filing fee. The commission shall rule on the request for waiver within 30 days.
38 Filing fees paid as required in this subsection must be segregated, apportioned and
39 expended by the commission for the purposes of this section. Any portion of the filing fee
40 that is received from any petitioner or petitioners and is not expended by the commission
41 to process the request for intercession must be returned to the petitioner or petitioners.

COMMITTEE AMENDMENT

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Sec. 12. 35-A MRSA §4358, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

§4358. Cost of review

The licensee shall submit to the commission, with the initial filing or upon a subsequent formal review of a decommissioning financing plan under this subchapter, a filing fee as determined by the commission, but not to exceed ~~\$50,000~~ \$115,000, in order to assist in covering the cost of review by the commission. Within one year after establishment of a decommissioning fund under this subchapter, the licensee may recover the licensing fee from the fund. Money received from the filing fee shall must be segregated, apportioned and expended by the commission for the purposes stated in this section, with a report to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. Any unexpended funds from the filing fee shall must be transferred to the decommissioning trust fund after approval of the plan.

Sec. 13. 35-A MRSA §4516-A, sub-§1, as amended by PL 2013, c. 495, §1, is further amended to read:

1. Violation of this Title. The commission may impose an administrative penalty on a natural gas pipeline utility that violates any provision of this Title relating to safety of pipeline facilities or transportation of gas or any rule issued under this Title in an amount not to exceed ~~\$200,000~~ \$223,000 for each violation. Each day of violation constitutes a separate offense.

Sec. 14. 35-A MRSA §4516-A, sub-§2, as amended by PL 2013, c. 495, §1, is further amended to read:

2. Maximum administrative penalty. The maximum administrative penalty may not exceed ~~\$2,000,000~~ \$2,227,000 for any related series of violations.

Sec. 15. 35-A MRSA §4702-A, sub-§2, ¶C, as enacted by PL 2011, c. 197, §2, is amended by amending subparagraph (2) to read:

(2) Require jurisdictional systems to be registered with the commission. The commission may not impose an administrative penalty under section 1508-A that exceeds ~~\$5,000~~ \$5,800 for failure to register a jurisdictional system;

Sec. 16. 35-A MRSA §4705-A, sub-§1, as amended by PL 2013, c. 495, §2, is further amended to read:

1. Violation of this Title. The commission may impose an administrative penalty on a gas utility that violates any provision of this Title relating to safety of gas facilities or any rule issued under this Title in an amount not to exceed ~~\$200,000~~ \$223,000 for each violation. Each day of violation constitutes a separate offense.

Sec. 17. 35-A MRSA §4705-A, sub-§2, as amended by PL 2013, c. 495, §2, is further amended to read:

2. Maximum administrative penalty. The maximum administrative penalty may not exceed ~~\$2,000,000~~ \$2,227,000 for any related series of violations.

Sec. 18. 35-A MRSA §7106, sub-§2, ¶A, as amended by PL 2003, c. 505, §40, is further amended to read:

1 A. The commission may impose an administrative penalty against any person who
 2 violates this section or any rule or order adopted pursuant to this section. In
 3 determining whether to impose a penalty, the commission may consider whether the
 4 violation was intentional. The penalty for a violation may be in an amount not to
 5 exceed ~~\$5,000~~ \$7,200 for each day the violation continues, up to a maximum of
 6 ~~\$40,000~~ \$57,000 for a first offense and a maximum of ~~\$110,000~~ \$157,000 for
 7 subsequent offenses. The amount of the penalty must be based on:

- 8 (1) The severity of the violation, including the intent of the violator, the nature,
 9 circumstances, extent and gravity of any prohibited acts;
 10 (2) The history of previous violations;
 11 (3) The amount necessary to deter future violations;
 12 (4) Good faith attempts to comply after notification of a violation; and
 13 (5) Such other matters as justice requires.

14 **Sec. 19. 35-A MRSA §7107, sub-§5, ¶B**, as amended by PL 2003, c. 505, §45, is
 15 further amended to read:

16 B. The amount of any administrative penalty imposed under paragraph A may not
 17 exceed ~~\$1,000~~ \$1,400 per violator for violations arising out of the same incident or
 18 complaint and must be based on:

- 19 (1) The severity of the violation, including the intent of the violator, the nature,
 20 circumstances, extent and gravity of any prohibited acts;
 21 (2) The history of previous violations;
 22 (3) The amount necessary to deter future violations;
 23 (4) Good faith attempts to comply after notification of a violation; and
 24 (5) Such other matters as justice requires.

25 **Sec. 20. Public Utilities Commission assessments; initial calculations.** By
 26 January 15, 2022, the Public Utilities Commission shall submit to the Joint Standing
 27 Committee on Energy, Utilities and Technology initial calculations related to the
 28 amendments in this Act to the Maine Revised Statutes, Title 35-A, section 116, subsection
 29 1. The committee may report out a bill to the Second Regular Session of the 130th
 30 Legislature based on the information submitted.

31 **Sec. 21. Public Advocate assessments; initial calculations.** By January 15,
 32 2022, the Public Advocate shall submit to the Joint Standing Committee on Energy,
 33 Utilities and Technology initial calculations related to the amendments in this Act to the
 34 Maine Revised Statutes, Title 35-A, section 116, subsection 8. The committee may report
 35 out a bill to the Second Regular Session of the 130th Legislature based on the information
 36 submitted.

37 **Sec. 22. Effective date.** Those sections of this Act that amend the Maine Revised
 38 Statutes, Title 35-A, section 116, subsections 1 and 8 take effect August 1, 2022.'

39 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 40 number to read consecutively.

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SUMMARY

This amendment requires the portion of the assessment applicable to investor-owned utilities and consumer-owned utilities within each category as determined by the Public Utilities Commission and the Public Advocate, respectively, to be allocated to each utility based on a 3-year rolling average of revenue reported by the utility. It removes the requirement that the commission submit draft legislation in its annual report and to the Second Regular Session of the 130th Legislature to adjust filing fees and penalties for inflation. It requires the filing fee for a reorganization be calculated using the transaction value as determined by the commission, instead of the estimated total value. Lastly, it adjusts filing fees and penalties for inflation.

FISCAL NOTE REQUIRED

(See attached)



130th MAINE LEGISLATURE

LD 251

LR 40(02)

An Act Regarding Public Utility Assessments, Fees and Penalties

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Energy, Utilities and Technology

Fiscal Note Required: Yes

A(H-289)

Fiscal Note

Future biennium revenue increase - Other Special Revenue Funds
Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

This bill requires the Public Utilities Commission (PUC) and the Office of the Public Advocate (OPA) to apportion the existing assessments collected from public utilities between investor-owned utilities and consumer-owned utilities. It requires the PUC to report on any filing fees or penalties collected during the previous year that have not been adjusted in the previous five years and to recommend adjustments based on the consumer price index. It also requires the PUC and OPA to include information regarding their activities devoted to investor-owned utilities and consumer-owned utilities in annual reports. The PUC is authorized to increase filing fees for reorganizations of utilities from \$50,000 to an amount not to exceed 5/100 of 1 percent of the estimated total value of the reorganization.

Changes to the filing fees or penalties based on the consumer price index and changes to the filing fees for reorganizations of utilities will increase Other Special Revenue Funds revenue to the PUC. No estimate of the amount is made at this time. Any additional costs to the PUC and OPA from the activities required in this bill are anticipated to be minor and can be absorbed within existing budgeted resources.