

MAINE STATE LEGISLATURE

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L.D. 1598

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DATE: April 29, 1997

(Filing No. S-163)

UTILITIES AND ENERGY

Reported by: Senator Carey

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to S.P. 514, L.D. 1598, Bill, "An Act to Provide for Enforcement of the Laws Regarding the Protection of Underground Utility Facilities"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 23 MRSA §3360-A, sub-§6-A, as enacted by PL 1991, c. 437, §8 and affected by §12, is amended to read:

6-A. Forfeitures. The forfeitures for failure to comply with this section are as follows.

A. An excavator who does not give notice of an excavation as required under subsection 3 and--who--damages--an underground-facility-in-the-course-of-that-exeavation or who undertakes the excavation in a reckless or negligent manner that poses a threat to an underground facility commits a civil violation and is subject to a civil forfeiture of up to \$1,000 in addition to any other remedies or forfeitures provided by law or any liability for actual damages.

B. An underground facility operator who does not mark the location of the operator's underground facilities as required under subsection 4 commits a civil violation and is subject to a civil forfeiture of up to \$1,000 in addition to any other remedies or forfeitures provided by law or any liability for actual damages resulting from the operator's failure to mark those facilities.

2 **Sec. 2. 23 MRSA §3360-A, sub-§§11 and 12** are enacted to read:

4 11. Enforcement. The system may contract with county
6 sheriffs or appropriate municipal law enforcement entities to
8 issue civil summonses to excavators who violate subsection 6-A,
 paragraph A.

10 12. Injunctions; costs. The owner or operator of an
12 underground facility may commence an action in a court of
14 competent jurisdiction seeking a temporary restraining order or
16 injunction to prevent a person from undertaking an excavation
 that may result in damage to the underground facility. The court
 may issue a temporary restraining order or injunction if the
 court determines that the excavation or proposed excavation:

18 A. Is being conducted or is likely to be conducted in a
 negligent or unsafe manner; and

20 B. Is causing or is likely to cause damage to the
22 underground facility.

24 If the owner or operator prevails in an action brought pursuant
26 to this subsection, the owner or operator is entitled to an award
 of the costs of bringing the action, including reasonable
 attorney's fees.'

28 Further amend the bill by inserting at the end before the
30 summary the following:

32 **FISCAL NOTE**

34 The additional workload and administrative costs associated
36 with the minimal number of new cases filed in the court system
38 can be absorbed within the budgeted resources of the Judicial
 Department. The collection of additional fines may increase
 General Fund revenue by minor amounts.'

40 **SUMMARY**

42 This amendment does the following.

44 1. It changes the standard for the imposition of civil
46 penalties under the so-called "dig safe law." Under current law,
48 an excavator is subject to the penalty if the excavator fails to
 notify owners of underground facilities located in the area of a
 proposed excavation and in fact damages the underground

COMMITTEE AMENDMENT "A" to S.P. 514, L.D. 1598

2 facility. Under this amendment, the excavator is subject to the
penalty if the excavator fails to provide the required notice,
4 regardless of whether actual damages to the facility occur, or if
the excavator undertakes an excavation in a reckless or negligent
6 manner that poses a threat to underground facilities.

8 2. It authorizes the underground facility damage prevention
system to contract with county sheriffs or appropriate municipal
law enforcement entities to issue civil summonses for violations
10 of the "dig safe law."

12 3. It authorizes the owner of an underground facility to
seek a temporary restraining order or an injunction to stop an
14 excavation that is causing or is likely to cause damage to the
owner's facilities. If the owner or operator prevails in the
16 action, the owner or operator is entitled to recovery of the
costs of bringing the action.