

MAINE STATE LEGISLATURE

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R.O.S

L.D. 331

DATE: 5/27/05

(Filing No. H-558)

UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 254, L.D. 331, Bill, "An Act To Improve the Operation of Underground Damage Prevention Procedures"

Amend the bill in section 1 in subsection 5-G in the 6th line (page 1, line 10 in L.D.) by striking out the following: "routine technical" and inserting in its place the following: 'major substantive'

Further amend the bill in section 1 in subsection 5-H in the 10th line (page 1, line 22 in L.D.) by striking out the following: "routine technical" and inserting in its place the following: 'major substantive'

Further amend the bill by striking out all of sections 2 and 3 and inserting in their place the following:

'Sec. 2. 23 MRSA §3360-A, sub-§6-C, as amended by PL 2003, c. 505, §3, is further amended to read:

6-C. Penalties. In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty for any violation of this subsection. The administrative penalty may not exceed \$500, except that, if the person has been found in violation of this subsection within the prior 12 months, the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Before

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2 imposing any penalties under this subsection, the commission
3 shall consider evidence of the record of the violator, including,
4 to the extent applicable, the number of successful excavations
5 undertaken by the violator or the number of locations
6 successfully marked by the violator during the prior 12 months.
7 The commission may require a person who violates any provision of
8 this section to participate, at the expense of the violator, in
9 an educational program developed and conducted by the system.

10 The Public Utilities Commission may impose administrative
11 penalties for any of the following violations:

12
13 A. Failure of an excavator to give notice of an excavation
14 as required under subsection 3, except to the extent the
15 excavator is exempt from the provisions of subsection 3
16 pursuant to other provisions of this section;

17 B. Excavation by an excavator in a reckless or negligent
18 manner that poses a threat to an underground facility;

19 C. Excavation by an excavator that does not comply with the
20 requirements of subsection 4-C, except to the extent the
21 excavator is exempt from the provisions of subsection 4-C
22 pursuant to subsection 5-C;

23 D. Failure of an underground facility operator to mark the
24 location of the operator's underground facilities within the
25 time limits required by subsection 4;

26 E. Marking by an underground facility operator of the
27 location of an underground facility in a reckless or
28 negligent manner; or

29 F. Failure of an excavator to comply with the requirements
30 of subsection 5-C, 5-D or 5-E.

31
32 The commission shall establish by rule standards for when and at
33 what level penalties must be assessed under this subsection.
34 Rules adopted under this subsection are major substantive rules
35 as defined in Title 5, chapter 375, subchapter 2-A.

36
37 **Sec. 3. 23 MRSA §3360-A, sub-§§13 and 14** are enacted to read:

38
39 13. Rules. The Public Utilities Commission may adopt rules
40 necessary to implement this section. Except as otherwise
41 specified in this section, rules adopted under this section are
42 major substantive rules as defined in Title 5, chapter 375,
43 subchapter 2-A.

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2 14. Discovered facilities. When an underground facility is
3 discovered during an excavation and the location of that facility
4 was, prior to the discovery, unknown or unclear to the
5 underground facility operator, the Public Utilities Commission
6 may direct that operator to determine and map the location of the
7 facility for a reasonable distance, as determined by the
8 commission, from the point of discovery.

10 **Sec. 4. Existing rules.** Rules adopted by the Public Utilities
11 Commission relating to the subject matter of the Maine Revised
12 Statutes, Title 23, section 3360-A prior to the effective date of
13 this Act remain in effect and do not require further
14 authorization by the Legislature. Any changes to such existing
15 rules are subject to the major substantive rule requirements of
16 Title 5, chapter 375, subchapter 2-A.

18 **Sec. 5. Rules concerning penalty standards.** In adopting rules to
19 establish standards for when and at what level penalties must be
20 assessed pursuant to the Maine Revised Statutes, Title 23,
21 section 3360-A, subsection 6-C, the Public Utilities Commission
22 shall consider the requirement of that subsection that before
23 imposing any penalties under that subsection, the commission
24 shall consider evidence of the record of the violator, including,
25 to the extent applicable, the number of successful excavations
26 undertaken by the violator or the number of locations
27 successfully marked by the violator during the prior 12 months.
28 The commission shall also consider the seriousness of the
29 violation and its impact on those served by the underground
30 facility.'

32 **SUMMARY**

34 This amendment, which is the unanimous report of the Joint
35 Standing Committee on Utilities and Energy, makes the following
36 changes to the bill.

38 1. It makes all Public Utilities Commission rules
39 implementing the so-called dig safe law, including the new rules
40 authorized by the bill, major substantive rules. It provides
41 that existing rules of the commission remain in effect but that
42 any amendments to those rules are subject to legislative review
43 as major substantive rules.

44 2. It provides that when an underground facility is
45 discovered during an excavation and the location of that facility
46 was, prior to the discovery, unknown or unclear to the
47 underground facility operator, the commission may direct that
48 operator to determine and map the location of the facility for a

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2 reasonable distance, as determined by the commission, from the
point of discovery.

4 3. It removes the section of the bill that amends a
6 provision of current law relating to violations by an underground
facility operator.

8 4. It requires the commission to adopt rules establishing
10 standards for when and at what level penalties must be assessed
for violations of the so-called dig safe law.

12

FISCAL NOTE REQUIRED
(See attached)

14

COMMITTEE AMENDMENT



122nd MAINE LEGISLATURE

LD 331

LR 0571(02)

An Act To Improve the Operation of Underground Damage Prevention Procedures

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Utilities and Energy

Fiscal Note Required: Yes

Majority Report

Fiscal Note

Minor cost increase - Other Special Revenue Funds