

MAINE STATE LEGISLATURE

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1
2 Date: 3/19/08 Majority

L.D. 2182
(Filing No. H-778)

3 **UTILITIES AND ENERGY**

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5 **STATE OF MAINE**
6 **HOUSE OF REPRESENTATIVES**
7 **123RD LEGISLATURE**
8 **SECOND REGULAR SESSION**

9 COMMITTEE AMENDMENT "A" to H.P. 1552, L.D. 2182, Bill, "An Act To
10 Allow Civil Penalties for Damaging Utility Property or for Theft of Utility Services"

11 Amend the bill by striking out everything after the title and before the summary and
12 inserting the following:

13 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
14 become effective until 90 days after adjournment unless enacted as emergencies; and

15 **Whereas,** theft of utility services and property is a significant and growing problem
16 in the State; and

17 **Whereas,** theft of utility services and property imposes costs on all users of utility
18 services and endangers the health and safety of utility workers and the general public; and

19 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
20 the meaning of the Constitution of Maine and require the following legislation as
21 immediately necessary for the preservation of the public peace, health and safety; now,
22 therefore,

23 **Be it enacted by the People of the State of Maine as follows:**

24 **Sec. 1.** 35-A MRSA §2705, as amended by PL 1993, c. 106, §3, is repealed.

25 **Sec. 2.** 35-A MRSA §2706 is enacted to read:

26 **§2706. Civil liability for utility services wrongfully obtained**

27 A person may not obtain utility services by deception, threat or force or any other
28 means designed to avoid due payment for the services that the person knows are available
29 only for compensation and a person may not, having control over the disposition of utility
30 services of another to which the person knows the person is not entitled, divert such
31 utility services to the person's own benefit or to the benefit of some other person who the
32 person knows is not entitled to the utility services. A person who violates this section is
33 liable in a civil action to the utility providing the service for:

COMMITTEE AMENDMENT

03/16

1 1. Cost of service. The cost of the utility services wrongfully obtained or diverted
2 plus interest on the value of those services based on an annual interest rate of 5%;

3 2. Other costs. All other reasonable costs to the utility, including attorney's fees and
4 costs of undertaking and completing the investigation resulting in a determination of
5 liability under this section; and

6 3. Civil penalty. A civil penalty not to exceed \$2,500 due and payable to the utility
7 for each violation of this section.

8 A person who is liable under this section may not pass on the cost of that liability,
9 including any civil penalty assessed, to any tenants of that person who received diverted
10 or wrongfully obtained utility services due to the actions of the liable person.

11 **Sec. 3. 35-A MRSA §2707** is enacted to read:

12 **§2707. Civil liability for damages to utility property**

13 A person may not intentionally, knowingly or recklessly damage, destroy or tamper
14 with property of a utility having no reasonable grounds to believe that the person has a
15 right to do so if such conduct creates a risk of interruption or impairment of services
16 rendered to the public or causes a substantial interruption or impairment of services
17 rendered to the public. A person who violates this section is liable in a civil action to the
18 utility owning the property affected for:

19 1. Cost of repair or replacement. The cost of repair or replacement of the utility
20 property, as necessary;

21 2. Other costs. All other reasonable costs to the utility, including attorney's fees and
22 costs of undertaking and completing the investigation resulting in a determination of
23 liability under this section; and

24 3. Civil penalty. A civil penalty not to exceed \$2,500 due and payable to the utility
25 for each violation of this section.

26 **Sec. 4. 35-A MRSA §2708** is enacted to read:

27 **§2708. Civil liability for utility property wrongfully obtained**

28 A person may not obtain or exercise unauthorized control over the property of a
29 utility with intent to deprive the utility of the property. A person who violates this section
30 is liable in a civil action to the utility owning the property affected for:

31 1. Cost of replacement. The cost of replacement of the utility property, as
32 necessary;

33 2. Other costs. All other reasonable costs to the utility, including attorney's fees and
34 costs of undertaking and completing the investigation resulting in a determination of
35 liability; and

36 3. Civil penalty. A civil penalty not to exceed \$2,500 due and payable to the utility
37 for each violation of this section.

38 **Sec. 5. Maine Revised Statutes headnote amended; revision clause.** In the
39 Maine Revised Statutes, Title 35-A, chapter 27, in the chapter headnote, the words

1 "inspection of meters" are amended to read "inspection of meters and civil liability" and
2 the Revisor of Statutes shall implement this revision when updating, publishing or
3 republishing the statutes.

4 **Emergency clause.** In view of the emergency cited in the preamble, this
5 legislation takes effect when approved.'

6 **SUMMARY**

7 This amendment is the majority report of the committee. The amendment makes the
8 following changes to the bill:

9 1. It redrafts the statutes governing civil liability for theft of utility services and
10 damages to utility property to remove references to the Maine Revised Statutes, Title
11 17-A, the Maine Criminal Code, and replaces those references with language describing
12 the actions that give rise to the civil liability. This clarifies that liability for damages and
13 the civil penalty in a civil action are not dependent on criminal prosecution;

14 2. It adds civil liability for wrongfully obtaining utility property in addition to
15 wrongfully obtaining utility services and damaging utility property;

16 3. It adds liability for interest on the cost of utility services wrongfully obtained at an
17 annual interest rate of 5%; and

18 4. It changes the civil penalty amount from a fixed \$2,500 per offense to an amount
19 not to exceed \$2,500, to allow the judge to set the penalty based on the circumstances.

20 **FISCAL NOTE REQUIRED**
21 (See attached)



123rd MAINE LEGISLATURE

LD 2182

LR 3459(02)

An Act To Allow Civil Penalties for Damaging Utility Property or for Theft of Utility Services

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Utilities and Energy
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil suits. The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Additional costs associated with this legislation can be absorbed by the Public Utilities Commission utilizing existing budgeted resources.