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ENERGY, UTILITIES AND TECHNOLOGY

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STATE OF MAINE

SENATE

132ND LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 770, L.D. 1963, “An Act to Protect and Compensate Public Utility Whistleblowers”

Amend the bill by striking out all of the emergency preamble.

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 35-A MRSA §1316, sub-§3, as repealed and replaced by PL 2023, c. 405, Pt. A, §124, is repealed and the following enacted in its place:

3. Discharge of, threats to or discrimination against employees for testimony presented to legislative committees, commission or Public Advocate. A supervisor may not discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this section, in good faith testifies before or provides information to a legislative committee, the commission or the Public Advocate regarding the operation of the business of a public utility or competitive electricity provider or because the employee brings the subject matter of the testimony or information to the attention of a person having supervisory authority.

A. Except as provided in paragraph B, this subsection does not apply to an employee who has testified before or provided information to a legislative committee, the commission or the Public Advocate unless the employee has first brought the subject matter of the testimony or information in writing to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable time to address the subject matter of the testimony or information. If appropriate, the employer shall respond in writing.

B. An employee providing testimony or information to the commission as an informational report pursuant to section 1316-B is not required to first bring the subject matter of the testimony or information to the attention of a supervisory authority with the employer.

1 **Sec. 2. 35-A MRSA §1316-B** is enacted to read:

2 **§1316-B. Whistleblower award**

3 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
4 following terms have the following meanings.

5 A. "Covered sanction" means, with respect to a public utility:

6 (1) An administrative penalty of \$100,000 or more imposed by the commission on
7 the public utility pursuant to section 1508-A, or pursuant to any other provision of
8 this Title, that, as determined by the commission, is substantially related to an
9 informational report; or

10 (2) A negative revenue adjustment for that public utility of at least \$250,000 over
11 a period of not more than 5 years that, as determined by the commission, is
12 substantially related to an informational report received by the commission in the
13 5 years prior to the imposition of the negative revenue adjustment.

14 B. "Covered sanction proceeding" means any proceeding conducted by the commission
15 involving a public utility that results in a covered sanction against that utility.

16 C. "Informational report" means information, including testimony or information
17 provided to the commission in accordance with section 1316, provided by a
18 whistleblower to the commission regarding the conduct of a public utility in the State
19 in accordance with the process established by the commission under subsection 2.

20 D. "Whistleblower" means an individual who provides an informational report to the
21 commission.

22 **2. Commission process.** The commission shall establish by rule a process to receive
23 informational reports in accordance with the following requirements.

24 A. The process must allow a whistleblower to provide an informational report to the
25 commission's consumer assistance and safety division by e-mail or telephone.

26 B. Except as provided in paragraph C, the commission shall provide for the confidential
27 treatment of the identity of a whistleblower and the contents of an informational report
28 pursuant to section 1316-A if the whistleblower requests such confidential treatment.

29 C. The process must allow for the commission's consumer assistance and safety
30 division to provide to the Public Advocate a summary of an informational report,
31 including the name and contact information of the whistleblower that provided the
32 report. The commission shall issue a protective order for the summary of the
33 informational report provided to the Public Advocate under this paragraph.

34 **3. Summary investigations.** The commission may conduct a summary investigation
35 based on an informational report received in accordance with this section.

36 **4. Notice requirements.** The commission shall provide on the commission's publicly
37 accessible website:

38 A. A description of the process established under subsection 2 and a statement that this
39 process is established to assist the commission in ensuring cost-effective performance
40 and compliance of public utilities in the State; and

1 B. Within 15 days of imposing a covered sanction on a public utility, a notice of the
2 amount of the covered sanction and a summary of the basis for the imposition of the
3 covered sanction.

4 **5. Whistleblower award; process; eligibility.** Within 180 days of the provision of a
5 notice of imposition of a covered sanction under subsection 4, paragraph B, a whistleblower
6 may apply to the commission for an award of a portion of the covered sanction. In
7 accordance with this subsection, the commission shall establish a process by rule by which
8 a whistleblower may apply to and receive from the commission an award of a portion of a
9 covered sanction.

10 A. Except as provided in paragraph B, if the commission determines that a
11 whistleblower's informational report was material to the commission's investigation
12 that led to the imposition of a covered sanction, the commission shall award the
13 whistleblower an amount between 10% and 30% of the covered sanction. The
14 commission, by rule, shall establish criteria to determine the circumstances in which
15 an informational report is considered material to the commission's investigation. The
16 circumstances may include, but are not limited to, that the information provided in the
17 informational report by the whistleblower is:

18 (1) Derived from independent knowledge or analysis of the whistleblower;

19 (2) Not known to the commission from any other source; and

20 (3) Not exclusively derived from an allegation made in a judicial or administrative
21 hearing, in a governmental report, hearing, audit or investigation or from the news
22 media, unless the whistleblower is a source of the information.

23 B. The commission may not make an award to a whistleblower pursuant to this
24 subsection if:

25 (1) The whistleblower is or, at the time the whistleblower acquired the information
26 or provided the informational report, was a member, officer or employee of the
27 commission, the Office of the Public Advocate or a law enforcement agency;

28 (2) The commission determines that the whistleblower has been convicted of a
29 criminal violation related to the public utility's violation of this Title for which the
30 whistleblower otherwise could receive an award under this section; or

31 (3) The whistleblower fails to submit information to the commission in such form
32 as the commission may, by rule, require.

33 **6. Whistleblower award; amount.** In determining the amount of the covered sanction
34 under subsection 5, paragraph A to award to a whistleblower that meets the requirements
35 of subsection 5, the commission shall consider:

36 A. The significance of the informational report to the success of the covered sanction
37 proceeding;

38 B. The degree of assistance provided by the whistleblower and any legal representative
39 of the whistleblower in the covered sanction proceeding;

40 C. The programmatic interest of the commission in deterring violations of this Title by
41 making awards to whistleblowers who provide information that leads to the successful
42 enforcement of such laws; and

1 D. Additional relevant factors as determined by the commission.

2 The commission may not base the determination of an award amount under this subsection
3 on the availability of funds in the sources of funding described in subsection 7.

4 **7. Sources of award funding.** The commission may, by order, direct a public utility
5 to pay an award determined under subsection 6 to a whistleblower directly or to the
6 commission on behalf of the whistleblower, in which case the commission shall timely
7 provide such payment to the whistleblower. Notwithstanding section 116, subsection 4,
8 the commission may pay the award using funds in the Public Utilities Commission
9 Reimbursement Fund under section 117.

10 **8. Rules.** The commission shall adopt rules to implement this section. Rules adopted
11 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
12 subchapter 2-A.'

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

15 SUMMARY

16 This amendment replaces the bill and removes the emergency preamble and emergency
17 clause. It requires the Public Utilities Commission to establish a process by rule by which
18 a whistleblower may provide information to the commission regarding the conduct of a
19 public utility in the State. If the commission determines that the whistleblower's
20 information was material to a commission investigation leading to the imposition of certain
21 covered sanctions, the commission may award the whistleblower a percentage of the
22 covered sanction amount. The amendment establishes criteria for the determination of the
23 amount of the award that a whistleblower may receive and limitations on the types of
24 individuals who may receive an award. It also allows an employee making an
25 informational report to be protected from discharge, threats or discrimination against the
26 employee regarding the employee's compensation, terms, conditions, location or privileges
27 of employment without first bringing the subject matter of the informational report in
28 writing to the attention of a person having supervisory authority with the employer.

29 FISCAL NOTE REQUIRED

30 (See attached)