



Mike Tipping
Senator, District 8

THE MAINE SENATE
132nd Legislature

3 State House Station
Augusta, Maine 04333

Senator Lawrence, Representative Sachs and members of the Energy, Utilities and Technology Committee, my name is Mike Tipping and I represent Senate District 8 in Penobscot County. I am pleased to present L.D. 1963, An Act to Protect and Compensate Public Utility Whistleblowers, along with a proposed amendment.

Many of the families I represent are struggling. They are faced with rising utility rates, as well as outages and shutoffs that can completely upend their lives. For decades, as members of this committee know, rates have risen faster than incomes. This bill is a common-sense way to add an important protection of the financial and civic interests of all Maine people.

Utility regulators in Maine have the power to set rates and to enforce standards. It's an absolutely essential function for businesses that have a state-enforced monopoly. Regulators may audit or request data from utilities, but what even the best regulators see is filtered and packaged by the entities they're regulating. Their oversight is also limited by their own time and staffing. As a result, not even the best regulators have access to the full, unfiltered reality.

There are those working within utilities who have a better view of potential issues and who may want to make them known. I understand, from a former Public Advocate, that they received multiple calls during their time of service from would-be whistleblowers. While they found these reports credible and worthy of investigation, the callers in each case were too concerned about losing their jobs and their career in the industry to fully come forward with their concerns.

This bill and the proposed amendment would address this issue in a way that I'm familiar with, thanks to my work on the Labor Committee, by strengthening incentives for workers who become whistleblowers and ensuring protections for them against retaliation if and when they speak out.

This policy is based on federal models used successfully for decades. These include those of the Department of Justice,¹ protecting taxpayers; the Securities and Exchange Commission,² protecting investors; and most recently, the National Highway Traffic Safety Administration,³ protecting vehicle occupants.

All of these programs use the same formula, anonymity plus award plus awareness. Specifically: anonymity in reporting, to reduce the risk of retribution; a possible award, generally 10-30% of any penalty resulting from their report; and basic publicity to raise awareness of the program.⁴

¹ <http://phillipsandcohen.com/what-is-a-qui-tam-case>

² <http://sec.gov/enforcement-litigation/whistleblower-program>

³ <http://nhtsa.gov/laws-regulations/whistleblower-program>

⁴ See footnotes 1-3 for program details.

Modeled most closely on the Securities and Exchange Commission process enacted under Dodd-Frank, Maine's Utility Whistleblower Act process would follow nine steps.

1. **Public notice:** The Maine Public Utilities Commission (PUC) posts to its website information describing the UWP and its purpose.
2. **Tip:** A whistleblower calls or emails the commission's Consumer Assistance and Safety Division (CASD) with a tip regarding potential utility imprudence, or any violation of Title 35-A or commission rule. If requested, the reporter's identity and information is made confidential.
3. **Dissemination:** CASD sends a confidential summary of the tip and whistleblower contact information to designated PUC and Public Advocate staff.
4. **Investigation:** The commission may investigate a tip in a proceeding. Note: confidential information may not be the sole basis for a penalty or negative revenue adjustment.
5. **Covered sanction:** If the commission imposes a "covered sanction" related to a tip, the commission posts notification to its website the amount and cause. A covered sanction is a monetary penalty of \$100,000 or more, or a negative revenue adjustment of at least \$250,000 over not more than 5 years, that is substantially related to a tip received in the previous 5 years.
6. **Application:** Within 180 days of notification, a whistleblower may apply to the commission for an award of between 10 and 30% of a covered sanction. The commission establishes the application process.
7. **Decision:** The commission determines whether the whistleblower's report was instrumental to the sanction, and meets other criteria. If the decision is affirmative, the commission sets the amount of the award based on these and other criteria.
8. **Award:** The commission may make an award from its Penalty Fund, or by order to a utility. A payment may be made in installments over up to 5 years.
9. **Public notice:** The commission posts to its website the amount of the award, linked to information describing the whistleblower process and its purpose.

If this program is successful, as federal programs have been, it will detect and deter problems and could lead to reduced costs and better service for Maine ratepayers. Under this policy, no penalty would come solely from a report or tip. Rather, regulators may investigate the tip, and a penalty may or may not ensue just as it would under current law.

Others are here who can speak more fully to the experiences of whistleblowers and why people need this kind of incentive and protection to step forward while risking their careers.



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I'd also like to acknowledge that we are nearing the end of our time in committees this session and so I and others have worked to bring this committee a finished product rather than just an idea. I appreciate the work of your committee analyst and all the advocates and state officials who have contributed to this process and to creating an amendment that I believe can receive broad support.

There are many proposals to help with utility rates before this committee this year. This is one that doesn't cost the state anything or make us choose between methods of electricity generation. It simply protects the rights of utility workers and the interests of all Mainers.

I appreciate your consideration and I am happy to answer any questions.

PROPOSED SPONSOR AMENDMENT

Offered by Sen. Tipping

May 14, 2025

TITLE: An Act to Protect and Compensate Public Utility Whistleblowers

Amend the bill by striking everything after the enacting clause and before the summary and replace with the following:

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

§1316-B Whistleblower award

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

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

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

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

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

C. "Informational report" means information provided by a whistleblower to the commission regarding the conduct of a public utility in the State in accordance with the process established by the commission under this subsection 2.

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

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

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

B. Except as provided in paragraph C, the commission shall provide for the confidential treatment of the identity of a whistleblower and the contents of an informational report if the whistleblower requests such confidential treatment.

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

3. Investigation. The commission may conduct a summary investigation based on an informational report it receives in accordance with this section.

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

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

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

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

A. Except as provided in paragraph B, if the commission determines that a whistleblower's informational report was material to the commission's investigation that led to the imposition of a covered sanction, the commission shall award the whistleblower an amount between 10% and 30% of the covered sanction. The commission's rules must establish criteria for determining the circumstances in which an informational report is considered to have been material to the commission's investigation, which may include, but are not limited to, that the information provided by the whistleblower is:

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

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

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

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

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

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

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

6. Whistleblower award; amount. In determining the amount of between 10% and 30% of the covered sanction to award to a whistleblower that meets the requirements of subsection 5, the commission shall consider:

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

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

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

D. Additional relevant factors as determined by the commission.

The commission may not base the determination of an award amount under this subsection on the availability of funds in the sources of funding described in subsection 7, paragraphs A and B.

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

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

SUMMARY

This amendment replaces the bill. It requires the Public Utilities Commission to establish a process by rule by which an individual may provide information to the commission regarding the conduct of a public utility in the State. If the commission determines that the individual's

information was material to a commission investigation leading to the imposition of certain sanctions, the commission may award the individual a percentage of the sanction amount. The amendment establishes criteria for the determination of the amount of the award that an individual may receive and limitations on the types of individuals who may receive an award.