

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 468

H. P. 351

House of Representatives, February 8, 1979

Referred to the Committee on Public Utilities. Sent up for concurrence and 1,800 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Wood of Sanford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Concerning Residential Utility Consumer Action Groups.

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

Sec. 1. 35 MRSA Pt. 8 is enacted to read:

PART 8

PUBLIC ADVOCACY ON UTILITY MATTERS

CHAPTER 301

RESIDENTIAL UTILITY CONSUMER ACTION GROUP

SUBCHAPTER I

DEFINITIONS AND ESTABLISHMENT OF RESIDENTIAL

UTILITY CONSUMER ACTION GROUP

§ 3501. Definitions

As used in this chapter, unless the context otherwise requires, the following words have the following meanings:

1. **Campaign expenditure.** “Campaign expenditure” means money, goods, services or other benefits paid, made, loaned, given, conferred or promised, including, but not limited to, use of office space, telephones, equipment, staff services and provision of meals, drinks, entertainment or transportation. This definition shall be construed as broadly as possible to include anything for which a recipient can be expected to pay money, or the promise, whether or not legally enforceable, of any such thing.

2. **Member of the board of directors.** “Member of the board of directors” or “member” means any residential consumer duly elected to the board of directors of the corporation.

3. **Member of the corporation.** “Member of the corporation” means any residential consumer who has contributed a minimum of \$1 to the Residential Utility Consumer Action Group in the corporation’s preceding fiscal year.

4. **Proxy.** “Proxy” means a signed statement authorizing one member to vote in another member’s name.

5. **Residential consumer.** “Residential consumer” or “residential utility consumer” means any person billed by a utility under a residential rate or any person whose rent for lodging includes payment for these utilities.

6. **Senatorial district.** “Senatorial district” means those political subdivisions used for the election of members of the Senate.

7. **Utility.** “Utility,” “regulated public utility” or “utility corporation” means a corporation which is engaged in the business of furnishing electric, telephone, gas or water service if rates for this furnishing or sale have been established or are subject to approval by a regulatory or municipal authority.

8. **Utility regulatory agency.** “Utility regulatory agency” or “agency” means a state, or political subdivision of a state, an agency or instrumentality of the United States, a public service or public utility commission or other similar body which has jurisdiction to establish rates and charges for the sale of utility services, siting of power plants, protection of the environment or general review authority over energy matters affecting the State.

§ 3502. Establishment and membership

There is hereby created a not-for-profit membership corporation to be known as the Residential Utility Consumer Action Group, Inc., whose members shall consist of all residential utility consumers who contributed a minimum of \$1 to the organization during the corporation’s preceding fiscal year. For the corporation’s first fiscal year, the members shall consist of all those who have contributed to the organization during that fiscal year.

§ 3503. Powers

1. **Powers of private membership nonprofit corporation.** The Residential Utility Consumer Action Group shall have all the powers, duties and responsibilities of any other private membership nonprofit corporation chartered by the State.

2. **Necessary powers for consumer representation.** The Residential Utility Consumer Action Group shall have all rights and powers reasonably necessary to effectively represent and protect the interests of consumers of utility services. It shall have all powers specifically designated as well as those necessary and incidental to providing that representation and protection.

3. **Power to seek exempt status.** The Residential Utility Consumer Action Group may seek such exempt status under the Internal Revenue Code as the members decide could further the protection of consumer interest.

4. **Power to use legislative devices.** The Residential Utility Consumer Action Group may use any legislative devices necessary to carry out its purposes including, but not limited to, initiative, referendum and recall.

5. **Power to accept certain types of funding.** The Residential Utility Consumer Action Group may accept grants, contributions and appropriations and may contract for services which cannot reasonably be performed by its employees.

SUBCHAPTER II

REPRESENTATION OF CONSUMERS

§ 3504. Hearings

1. **Power of intervention.** Whenever the Residential Utility Consumer Action Group determines that the result of any utility regulatory agency proceeding may substantially affect the interests of residential utility consumers, it may intervene as of right as a party or otherwise participate for the purpose of representing the interests of residential utility consumers in that proceeding. The Residential Utility Consumer Action Group shall comply with utility regulatory agency statutes and rules or procedures of general applicability governing intervention or participation in that proceeding and the conduct of that proceeding. The intervention of the Residential Utility Consumer Action Group in any such proceeding shall not affect the obligation of the utility regulatory agency conducting that proceeding to operate in the public interest.

2. **Request for issuance of orders.** In any utility proceeding or activity in which the Residential Utility Consumer Action Group is intervening or participating, it is authorized to request the utility regulatory agency to issue those orders which are appropriate under the agency's rules of practice and procedure with respect to the summoning of witnesses, copying of documents, papers and records, production of books and papers and submission of information in writing. The utility regulatory agency shall issue those orders unless it reasonably determines that the order requested is not relevant to the matter at issue or would unduly interfere with the utility regulatory agency's discharge of its own statutory obligation.

§ 3505. Prehearing activity

1. **Power to secure public utility data.** In exercising its authority under this section, the Residential Utility Consumer Action Group is authorized to obtain data by requiring any utility corporation whose actions it determines may substantially affect an interest of residential utility consumers, by general or specific order setting forth with particularity the consumer interest involved and the purposes for which the information is being sought, to file with it a report or answers in writing to specific questions concerning those activities and other related information.

2. **Limitations on power to secure public utility data.** The Residential Utility Consumer Action Group shall not exercise its authority under subsection 1, if the information sought is:

A. Available as a matter of public record; or

B. For use in connection with its intervention in a regulatory proceeding against the utility to whom the interrogatory is addressed if the proceeding is pending at the time the interrogatory is requested and the regulatory agency has subpoena power.

§ 3506. Petitions for rule making

1. **Power to petition.** Whenever the Residential Utility Consumer Action Group determines that it would be in the interest of residential utility consumers to do so, it may file with the regulatory agency a petition requesting it to commence and complete a proceeding respecting any utility activity or lack thereof, or to complete the proceedings.

2. **Contents of petition.** The petition shall set forth facts which it is claimed establish the need for the proceeding and a brief description of the substance of the order or amendment desired as a result of the hearing.

3. **Proceeding concerning petition.** The regulatory agency may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not the petition should be granted.

4. **Grant or denial of petition.** Within 60 days after the filing of the petition described in subsection 2, the utility regulatory agency shall either grant or deny the petition. If the agency grants the petition, it shall promptly commence or complete the proceeding as requested by the petition. If the agency denies the petition, it shall publish the reasons for that denial.

5. **Civil action to compel commencement or completion of petition proceeding.** If the utility regulatory agency denies a petition made under this section, or if it fails to grant or deny that petition within 60 days, the petitioner may commence a civil action in the Superior Court to compel the utility regulatory agency to commence or complete the proceeding, or both, as requested in the petition. Any such action may be filed by the petitioner 30 days after the denial of the petition or, if the agency fails to grant or deny the petition within 60 days, at any time thereafter.

6. **Court power.** If the petitioner can demonstrate to the satisfaction of the court by a preponderance of the evidence in a de novo proceeding before that court that the failure of the agency to commence or complete the proceeding as requested in the petition was unreasonable, the court shall order the agency to commence or complete the proceeding, or both, as requested in the petition.

7. **Limitation on court power.** In any action under this section, the court shall have no authority to compel the agency to take any action other than the commencement or completion, or both, of a proceeding.

§ 3507. **Additional remedies**

The remedies under this chapter shall be in addition to, and not in lieu of, other remedies provided by law.

§ 3508. **Judicial review**

The Residential Utility Consumer Action Group shall be deemed to have an interest sufficient to maintain actions for judicial review and may, as of right, and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of an agency action that the Residential Utility Consumer Action Group determines may substantially affect the interests of consumers.

§ 3509. **Research**

The Residential Utility Consumer Action Group is authorized to conduct, support and assist research, studies, plans, investigations, conferences, demonstration projects and surveys concerning the interests of residential utility consumers.

SUBCHAPTER III

FUNDING

§ 3511. **Residential Utility Consumer Action Group Account**

1. **Establishment.** There is hereby created a new account to be included in the Uniform System of Accounts to be called the Residential Utility Consumer Action Group Account.

2. **Inclusion of material with billing.** Upon proper request by the Residential Utility Consumer Action Group, as described in subsection 3, each utility shall include or enclose within, upon or attached to any periodic billing which that utility sends, mails or delivers to any or every utility consumer:

A. A card, statement or similar enclosure not to exceed 3x5 inches and not to exceed ¼ ounce, prepared and furnished by the residential Utility Consumer Action Group, upon which the utility consumer may indicate that any payment in excess of the balance due on that billing shall be transferred to the Residential Utility Consumer Action Group Account;

B. A statement prepared and furnished to the utility by the Residential Utility Consumer Action Group to be printed upon the face of the billing which shall be no smaller than one inch high and 2 inches wide and a box to be printed upon the face of the billing which shall be no smaller than one inch high and 2 inches wide upon which the utility consumer may indicate that any payment in excess of the balance due on that billing shall be transferred to the Residential Utility Consumer Action Group; and

C. A statement or any materials prepared and furnished to that utility by the Residential Utility Consumer Action Group concerning the organization, past, current and future activities of the Residential Utility Consumer Action Group or any other matter which may affect the interests of utility consumers. The statement or materials shall not exceed the folded size of 3x5 inches and shall not exceed $\frac{1}{4}$ ounce.

3. Procedure for inclusion. Each utility subject to this chapter shall include or enclose within, upon or attached to any periodic billing any material prepared and furnished by the Residential Utility Consumer Action Group as described in subsection 2, upon the written request of the Residential Utility Consumer Action Group which shall conform to the following guidelines:

A. The Residential Utility Consumer Action Group shall notify the utilities of its intention to include any material or statement as described in subsection 2, within, upon or attached to any specified periodic billing up to one year in advance, but not less than 21 calendar days prior to the mailing of those periodic billings; and

B. The Residential Utility Consumer Action Group shall supply the utility with the material or statement to be included within, upon or attached to any specified periodic billing up to one year in advance, but not less than 14 calendar days prior to the mailing of those periodic bills.

4. Payment of reasonable utility costs. The Residential Utility Consumer Action Group shall pay all reasonable costs incurred by a utility company in complying with this section. In case of dispute as to the proper costs, the utility shall continue to comply with this section.

5. Transfer by utility of accumulated moneys. Each utility subject to this chapter shall transfer any moneys accumulated in the Residential Utility Consumer Action Group Account to the Residential Utility Consumer Action Group every 30 days. It shall also within the time period stated transfer to the Residential Utility Consumer Action Group the names and the amount of the contribution of those consumers who have made contributions to the Residential Utility Consumer Action Group Account.

6. Interference with or penalizing of consumer contributions prohibited. No utility, officer or employee of a utility may in any way interfere with the service of or in any way penalize any consumer contributing to the Residential Utility Consumer Action Group or participating in any of its activities.

7. **Interference with or hindering of check-off card distribution prohibited.** No utility, officer or employee of the utility may in any way interfere with or hinder the distribution of the check-off card, or in any way change its mailing procedures so as to make the inclusion and distribution of the check-off card difficult and more expensive.

SUBCHAPTER IV BOARD OF DIRECTORS

§ 3521. Establishment and membership

There is hereby created a board of directors whose members shall be chosen by the membership of the Residential Utility Consumer Action Group in a yearly meeting convened for that purpose. The initial terms of the members of the board shall be staggered and drawn by lot, 1/3 of the board to be elected annually.

§ 3522. Term of office

The term of office for members of the board shall be 3 years and no member shall serve more than 2 consecutive terms.

§ 3523. Nomination of members

1. **Initial members.** There shall be 7 initial members of the board of directors, each individually appointed by the Attorney General, the Speaker of the House, the Majority Leader of the House, the Minority Leader of the House, the President of the Senate, the Majority Leader of the Senate and the Minority Leader of the Senate.

2. Successor members.

A. Once the consumers of the utilities have contributed \$10,000, a meeting of the membership of the corporation shall be promptly held to elect the board of directors.

B. The board shall be comprised of one person from each senatorial district who shall represent the interests of the members of that district. Each member of the corporation within a senatorial district shall have one vote in the election from that district.

3. Financial disclosure of candidates for board members.

A. Each candidate for the board of directors shall file a statement of financial interests in accordance with this chapter within 60 days prior to the election of members of the board of directors.

B. A statement of financial interests shall be on a form approved by the members and shall include the following information:

- (1) The identity, by name, of all corporate and organizational directorships held and fiduciary relationships held;

- (2) A detailed description of all real estate in the State in which any interest, direct or indirect, is held, including an option to buy;
- (3) The name of each creditor to whom moneys in excess of \$1,000 are owed, the nature of the amount owed and the interest rate;
- (4) The name of each business, insurance policy or trust in which a financial interest exists and the nature of the amount of the interest;
- (5) The source, by name and category, of the amounts of any income, including capital gains, whether or not taxable, received during the preceding year;
- (6) A list of businesses with which he is associated that do business with a utility and a description of the nature of the business;
- (7) If an attorney, accountant or engineer, a list of all clients doing business with a utility and a description of the nature of the business; and
- (8) If an insurance or real estate agent, a list of all clients of the individual or firm with which he is associated which are either a utility, an employee, of the utility, a consultant to any utility or a shareholder of any utility.

4. Financing of elections.

A. The Residential Utility Consumer Action Group shall mail to each member within a senatorial district a 2-page statement from each candidate. The costs for mailing shall be borne by the Residential Utility Consumer Action Group.

B. In addition to the financial assistance provided each candidate in paragraph A, each candidate may spend \$250.

C. In order to become eligible for the mailing described in this section, a candidate shall obtain, maintain and furnish to the membership any records, books and other information it may request regarding campaign expenditures and cooperate fully with the audit and examination conducted by the membership.

D. Each member who is a candidate for election to the board of directors shall certify, under the penalty of perjury, that he has incurred no expenditures, other than expenditures under paragraphs A and C, in excess of \$250.

§ 3524. Election procedures

1. Candidate membership and residential qualifications. Every candidate for election as a member of the board of directors from a senatorial district shall be a member of the Residential Utility Consumer Action Group and reside in that senatorial district.

2. Submission of petitions. A petition for nomination to the board of directors from any district shall be submitted to the board of directors not less than 60 days prior to the election and shall be signed by 5% of the members residing in that district.

3. **Verification of petitions.** The board of directors shall verify the validity of the signature.

4. **Declaration of nomination.** If the board of directors verifies the signatures required under subsection 2, the board shall declare the nomination in effect.

5. **Election method.** At the same time that a candidate's statement and financial disclosure form, as described in section 3523, subsection 3, is sent to each member residing in that district, an official ballot listing the candidates for election to the board of directors from that district shall be included. Each member has one vote in the election and shall submit the mail ballot not less than 3 days before the election.

6. **Majority and plurality requirements.** Election shall be by a simple majority of the votes cast. If there are more than 2 candidates and no one receives a majority, the candidate with the most votes shall be declared the winner.

7. **Development of election procedures.** After the first election of the board of directors, the board shall develop election procedures and standards to be approved by a majority of the members of the corporation.

§ 3525. Eligibility

No employee, consultant, shareholder, bondholder or spouse of any employee, consultant, shareholder or bondholder of a utility shall be eligible for election to the board of directors. If any member of the board of directors becomes either an employee, consultant, shareholder or bondholder or spouse of any employee, consultant, shareholder or bondholder of a utility, his seat shall be declared vacant.

§ 3526. Vacancies

To fill any vacancy occasioned by the failure of any person elected as a director to qualify, or in the event of death, removal, resignation or disqualification of any member, a successor for the unexpired term shall be nominated from the same senatorial district and selected by a 2/3 majority of the remaining members of the board. The vacancies shall be filled within 2 meetings of the board.

§ 3527. Powers

The board shall have the power to manage the affairs of the corporation.

§ 3528. Duties

The board shall have, among others, the following duties:

1. **Financial report.** To submit to the membership at each quarterly meeting a financial report for that quarterly period;

2. **Summary of activities.** To submit to the membership at quarterly intervals a summary of its activities for the preceding quarter and a detailed outline of the activities for the forthcoming quarter;

3. **Records.** To keep minutes, books and records which will reflect all of the acts and transactions of the board and which shall be subject to examination by any member;

4. **Statements.** To prepare periodic statements of the financial and substantive operations of the corporation and to make copies of each available to members and the public; and

5. **Audit.** To cause its books to be audited by a competent certified public accountant at least once each fiscal year.

§ 3529. Meetings and materials

1. **Open to public.** All meetings of the board shall be open to the public, including meetings of all subcommittees. In addition, complete minutes of the meetings shall be kept and distributed to all public libraries in the State. all reports, studies and financial data shall be open to public inspection during regular business hours.

2. **Meetings; requirement.** The board of directors shall hold regular meetings at least once during each quarter of the calendar year on such dates as it may determine. Special meetings may be called by the president or any 4 members upon at least 10 days' notice. Five members of the board shall constitute a quorum.

§ 3530. Annual report

The board shall, as soon as practical after the close of the fiscal year, prepare and mail an annual report to each member and to each public library in the State.

§ 3531. Expenses and compensation

The members of the board shall be reimbursed for expenses necessarily incurred by them in the performance of their duties.

§ 3532. Recall

Members of the board of directors may be removed by petition of 40% of the total members eligible to vote in the last election from the senatorial district from which the board member was elected. No petition for recall may be filed within 6 months of the election of the board member. If a member of the board of directors is recalled, a new election for that seat shall be held within 2 months. The recalled member shall serve pending the election.

§ 3533. Members to be bonded

Members of the board of directors and staff eligible to disburse funds shall be bonded. The cost of the bonds shall be paid by the Residential Utility Consumer Action Group.

SUBCHAPTER V
OFFICERS AND STAFF

§ 3541. Election of officers

1. Election of president, vice-president, secretary and treasurer. At the first regular meeting of the board following the annual election, the board shall elect from its members a president, vice-president, secretary and a treasurer. These officers shall hold office for the ensuing year and until their successors are elected, unless removed from office by the concurring vote of a majority of all the directors.

2. Filling of vacancies. In case of the death, resignation or removal of any of the aforementioned officers, the board shall elect a successor to hold office for the remainder of the term for which that officer had been elected.

3. Election of comptroller and other officers. The board shall also have the power to elect and at pleasure remove a comptroller and such other officers as it shall determine.

§ 3542. Duties and powers

The officers shall perform the duties customary to their offices and any other duties which are delegated to them by the board of directors.

§ 3543. Executive director

The board of directors shall engage the services of an executive director, who shall be in immediate charge of the activities of the staff of the corporation, subject to the directions of the board of directors. He shall exercise supervision over the offices, facilities and personnel of the corporation and shall have custody of its books, records and mailing lists. He shall prepare and submit to the treasurer the annual and quarterly budgets and income estimates which are to be presented to the board of directors. He shall have all the privileges of membership on the board of directors, except the right to vote. The executive director shall be subject to removal by the concurring vote of a majority of all the directors.

SUBCHAPTER VI
CONSUMER COMPLAINTS, ANNUAL MEETINGS,
OTHER GROUPS NOT AFFECTED, STOCK OWNERSHIP,
PENALTIES

§ 3551. Consumer complaints

Whenever the Residential Utility Consumer Action Group receives from a residential utility consumer any written complaint, it shall, unless it determines that the complaint or information appears to be frivolous, promptly transmit the complaint or information to the appropriate utility regulatory agency. That utility

regulatory agency shall keep the Residential Utility Consumer Action Group informed of what action it is taking on any complaint transmitted pursuant to this section.

§ 3552. Annual meeting

The annual membership meeting shall be held on a date in November and at a place within the State to be determined by the board of directors.

§ 3553. Other groups not affected

Nothing in this chapter shall be construed to limit the right of any consumer or group or class of consumers or environmentalists to initiate, intervene in or otherwise participate in any utility regulatory agency or court proceeding or activity, nor to require any petition or notification to the Residential Utility Consumer Action Group as a condition precedent to that right, nor to relieve any utility regulatory agency or court of any obligation or affect its discretion to permit intervention or participation by a consumer or group or class of consumers in any proceeding or activity.

§ 3554. Stock ownership

Nothing in this chapter shall be deemed to preclude the ownership by the corporation of one share of stock in each utility doing business in the State.

§ 3555. Penalties

1. **Civil penalty.** Whoever violates any provision of this chapter shall be subject to civil penalty of not more than \$5,000 for each violation. Each violation of section 3511, subsection 6, shall constitute a separate and continuing violation.

2. **Criminal penalty.** Any person, director or officer, who shall knowingly or willfully violate any provision of this chapter or shall fail to perform any duty imposed under this chapter shall be guilty of a Class E crime.

STATEMENT OF FACT

This bill would create a Residential Utility Consumer Action Group. The purpose of this group is to represent and protect the interests of utility service consumers throughout the State. The group, through coordination of consumer efforts and recognition of consumer problems, would provide utility consumers with an effective means of making themselves heard in dealing with large utility companies in the State.