

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
New Draft of: H. P. 993, L. D. 1181  
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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1673**

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H. P. 1578

House of Representatives, May 29, 1981

Reported by Representative Davies from the Committee on Public Utilities. Printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Create the Public Advocate to Represent the Interests of Utility Customers.**

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

Whereas, decisions rendered by the Public Utilities Commission have a major impact on the using and consuming public of Maine; and

Whereas, the Public Utilities Commission now has pending before it several major proceedings which will affect the prices paid by Maine people for basic utility services, including electricity; and

Whereas, the using and consuming public requires full-time, consistent representation before the Public Utilities Commission; and

Whereas, funding for advocacy groups which have represented segments of the using and consuming public is endangered due to federal budget cuts; and

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

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

**Sec. 1.** 2 MRSA § 6, sub-§ 5, as last amended by PL 1979, c. 651, § 1 and as last repealed and replaced by PL 1979, c. 663, § 3, is repealed and the following enacted in its place:

**5. Range 86.** The salaries of the following state officials and employees shall be within salary range 86:

**Adjutant General;**

**Director of Labor;**

**General Counsel of the Public Utilities Commission;**

**Deputy Chief of the State Police;**

**Director of Transportation of the Public Utilities Commission;**

**Director of State Lotteries;**

**State Archivist;**

**Director of Maine Geological Survey;**

**Executive Director, Maine Land Use Regulation Commission;**

**Director of Finance of the Public Utilities Commission;**

**Executive Director of the Maine Labor Relations Board;**

**Chairman, Maine Employment Security Commission; and**

**Public Advocate.**

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

**§ 1-A. Public Advocate**

**1. Appointment of the Public Advocate.** The Public Advocate shall be appointed by the Governor, subject to review by the legislative committee having jurisdiction over public utilities and to confirmation by the Legislature, and shall serve at the pleasure of the Governor. Any vacancy shall be filled by similar appointment.

**2. Staff of the Public Advocate.** The staff of the Public Advocate shall consist of such other personnel, including staff attorneys, as the Public Advocate deems necessary in order to represent the using and consuming public, as required by subsection 4. All such personnel shall be appointed, supervised and directed by the Public Advocate. The Public Advocate is not subject to the supervision, direction or control of the chairman or members of the commission.

**3. Salaries and compensation.** Except for the Public Advocate, the appointment, salaries and compensation of all personnel of the staff of the Public Advocate shall be subject to the Personnel Law.

**4. Duties.** The duties and responsibilities of the Public Advocate shall be to

represent the using and consuming public in matters within the jurisdiction of the commission, including, but not limited to:

**A. Reviewing, investigating and making appropriate recommendations to the commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility or regulated carrier, and when deemed necessary by the Public Advocate, to intervene in related proceedings before the commission;**

**B. Reviewing, investigating and making appropriate recommendations to the commission with respect to the reasonableness and adequacy of the service furnished or proposed to be furnished by any public utility or regulated carrier, and when deemed necessary by the Public Advocate, to intervene in related proceedings before the commission;**

**C. Petitioning the commission to initiate proceedings to review, investigate and take appropriate action with respect to the rates or service of any public utility or regulated carrier, when deemed necessary by the Public Advocate;**

**D. Reviewing, investigating and making appropriate recommendations to the commission with respect to any proposal by a public utility or regulated carrier to reduce or abandon service to the public, and when deemed necessary by the Public Advocate, to intervene in related proceedings before the commission;**

**E. Reviewing, investigating and making appropriate recommendations, including alternative analyses and plans as necessary, to the commission with respect to the issuance of certificates of public convenience and necessity, and when deemed necessary by the Public Advocate, to intervene in related proceedings before the commission;**

**F. Reviewing, investigating and making appropriate recommendations to the commission with respect to mergers and consolidations of public utilities and regulated carriers, and when deemed necessary by the Public Advocate, to intervene in related proceedings before the commission;**

**G. Reviewing, investigating and making appropriate recommendations to the commission with respect to contracts of public utilities or regulated carriers with affiliates or subsidiaries, and when deemed necessary by the Public Advocate, to intervene in related proceedings before the commission;**

**H. Reviewing, investigating and making appropriate recommendations to the commission with respect to securities, regulations and transactions of public utilities or regulated carriers, and when deemed necessary by the Public Advocate, to intervene in related proceedings before the commission;**

**I. Investigating complaints affecting the using and consuming public generally, or particular groups thereof, and, where appropriate, make recommendations to the commission with respect to such complaints;**

**J. When deemed necessary by the Public Advocate, in the interest of the using and consuming public, or any particular group thereof, intervening and**

appearing on their behalf in any proceedings before the commission, appeals from orders of the commission, or proceedings before state and federal agencies and courts in which the subject matter of the action affects the customers of any utility doing business in this State, except that the Public Advocate shall not intervene in any proceeding in which the commission staff is representing a position substantially similar to that of the Public Advocate, as determined by the Public Advocate; and

**K. Preparing and submitting an annual report of the activities of the Public Advocate to the Governor and to the legislative committee having jurisdiction over public utilities by August 1st of each year, with copies available to all legislators on request.**

**5. Appeal from commission orders. The Public Advocate has the same rights of appeal from commission orders or decisions to which he has been a part as other parties to commission proceedings.**

**6. Legal representation. Notwithstanding the provisions of Title 5, section 191, the Public Advocate, or a staff attorney, may act as the counsel for the office of the Public Advocate. The Public Advocate may request the assistance of the Attorney General or employ private counsel for this purpose.**

**7. Relationship with the Attorney General. This section shall in no way limit the rights of the Attorney General to intervene before the Public Utilities Commission or to appeal from commission orders or decisions.**

**8. Expert witnesses. The Public Advocate may employ expert witnesses and pay appropriate compensation and expenses to employ such witnesses.**

**9. Expenses of the Public Advocate. The Public Advocate, within established budgetary limits and as allowed by law, shall authorize and approve travel, subsistence and related necessary expenses of the Public Advocate or members of the staff of the Public Advocate, incurred while traveling on official business.**

**10. Information from utilities. Utilities shall provide to the Public Advocate copies of all reports and other information required to be filed with or which may be submitted to the commission, except to the extent that this requirement is waived, in writing, by the Public Advocate. The Public Advocate shall have the same right to request data as an intervenor in a proceeding before the commission, and, in addition, may petition the commission, for good cause shown, to be allowed such other information as may be necessary to carry out the purposes of this section.**

**11. Conflicts of interest. In addition to the limitations of Title 5, section 18, neither the Public Advocate nor any employee of the Public Advocate shall have any official or professional connection or relation with, or hold any stock or securities in any public utility, as defined in section 15, operating within this State, or any carrier regulated by the Public Utilities Commission, nor shall he render any professional service against any such public utility or carrier nor shall he be a member of a firm which renders any such service.**

**12. Restriction; repeal.** The duties of the Public Advocate are restricted to those relating to matters within the jurisdiction of the Public Utilities Commission. In the event that the selection of the Public Utilities Commission is required by law to be accomplished by any other method than appointment by the Governor, with confirmation by the Legislature, the Public Advocate shall be repealed, and the staff and any balance in the budget shall be transferred to the Public Utilities Commission for the remainder of the fiscal year, effective on the date when a quorum of the Public Utilities Commission selected by such other method is qualified for office.

**Sec. 3.** 35 MRSA § 17, sub-§ 1, as amended by PL 1979, c. 614, is further amended by adding after the first sentence a new sentence to read:

**Notwithstanding any other provision of law, the amount of annual revenue to be raised by this section shall be increased by an additional \$300,000 to supplant an equal amount of General Fund revenues used previously to fund commission activities which shall instead be appropriated for the use of the Public Advocate. The commission may bill and collect this additional amount for the fiscal year ending June 30, 1982 on the effective date of this Act establishing the Public Advocate.**

**Sec. 4.** 35 MRSA § 17, sub-§ 4, as amended by PL 1979, c. 663, § 218, is further amended by adding at the end a new sentence to read:

**Notwithstanding any other provision of law, the number of employees funded by this section shall be increased by 10 on the effective date of this Act establishing the Public Advocate to compensate for an equivalent reduction in the number of employees funded by the General Fund revenues which elsewhere in this section are appropriated for the use of the Public Advocate.**

**Sec. 5. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
<b>Public Utilities Commission</b>		
Positions	(-10)	(-10)
Personal Services	(\$250,000)	(\$250,000)
All Other	( 50,000)	( 50,000)
<b>Public Advocate</b>		
Positions	(8)	(8)
Personal Services	190,000	190,000
All Other	100,000	100,000
Capital Expenditures	10,000	10,000

**FISCAL NOTE**

No new funds will be appropriated from the General Fund under this Act.

Rather, there will be a transfer of \$300,000 in General Fund moneys from the Public Utilities Commission to the Public Advocate. In turn, the Public Utilities Commission will be authorized to replace these transferred moneys by increasing the ceiling on utility assessments to generate an additional \$300,000 in revenue in the Regulatory Fund.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

#### STATEMENT OF FACT

The new draft creates the Public Advocate, whose functions are to represent the using and consuming public in matters under the jurisdiction of the Public Utilities Commission. In particular, it will represent the public interest in proceedings dealing with utility rates, service, construction of new facilities and abandonment of service.

The Public Advocate will be appointed by the Governor, with confirmation by the Legislature, serving at the pleasure of the Governor, and will be in pay range 86. The Public Advocate and his staff will be independent of the Public Utilities Commission.

The new draft establishes a smaller Public Advocate's office than the original bill. The provisions which merged the Office of Energy Resources with the Public Advocate and those which reduced the staff of the Public Utilities Commission have been dropped.

The Public Advocate will be funded by \$300,000 from the General Fund, but this will not require an additional appropriation because it will be transferred from the Public Utilities Commission budget. The Public Utilities Commission will increase its utility assessments by \$300,000 to compensate.

An emergency preamble and an emergency clause have been added to make the Act effective when approved.