

# MAINE STATE LEGISLATURE

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AN EXPANDED ROLE FOR THE PUBLIC ADVOCATE  
REPORT OF A STUDY  
BY THE  
JOINT STANDING COMMITTEE ON STATE GOVERNMENT  
TO THE  
MAINE LEGISLATURE  
January 1984

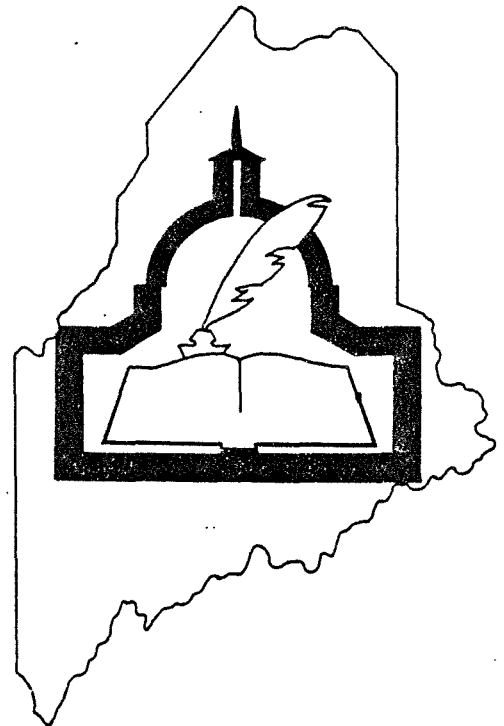
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STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

COMMITTEE ON STATE GOVERNMENT

Report of the Joint Standing Committee  
on State Government

With Respect To Its Study of

The Feasibility of Extending The Role  
of The Public Advocate To Other  
Rate Making and Regulatory Organizations

December, 1983

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STATE OF MAINE

ONE HUNDRED AND ELEVENTH LEGISLATURE

COMMITTEE ON STATE GOVERNMENT

Senator Charles Pray, Chairman  
Legislative Council  
State House  
Augusta, ME 04333

Dear Senator Pray:

Enclosed is the final report of the Joint Standing Committee on State Government on its study of the Feasibility of Extending the Role of the Public Advocate To Other Rate Making and Regulatory Organizations. This was authorized by the Legislative Council, and the final report is required to be presented to the Second Regular Session of the 111th Legislature. We hope the 111th Legislature will find this report valuable.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul E. Violette".

Senator Paul E. Violette  
Senate Chairman

A handwritten signature in cursive script, appearing to read "Dan A. Gwadosky".

Representative Dan A. Gwadosky  
House Chairman

enclosure  
elk

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## SUMMARY

During the First Regular Session of the 111th Legislature, three bills were introduced proposing Public Advocate intervention in workers compensation insurance rate proceedings, proceedings before the Superintendent of Insurance, and Milk Commission proceedings. These bills were withdrawn in order that a study of the issues raised by the bills and other adjudicatory proceedings could be conducted by the Joint Standing Committee on State Government.

The paramount issue of the study is whether there is satisfactory substantive evidence from the public's/consumers' perspective in adjudicatory type proceedings of various state regulatory boards and similar organizations, which the decision makers are able to take into consideration before they render a decision. In addition, it is necessary to consider whether Public Advocate intervention before these organizations is an effective and desirable method for introducing substantive evidence from the public viewpoint to the decision makers.

The Committee on State Government established criteria by which regulatory boards, commission, and similar organizations would be selected for scrutiny. The criteria included the following:

1. The decision of the regulatory organization have a broad impact;
2. The issues and policies before the regulatory organization are complex and not readily understood;
3. The degree of public participation in the regulatory proceedings is limited, not effective, or overwhelmed by the resources of the regulated groups;
4. The cost to the population of cases before the regulatory organization is significant;
5. There is limited public access to information, evidence, and data by which decisions of the regulatory agency are rendered; and
6. The decision makers operate in a quasi-judicial forum.

As a result of applying this criteria to various regulatory organizations, the following organizations were selected for review:

1. The Board of Environmental Protection,
2. The Land Use Regulation Commission,
3. The Maine Milk Commission,
4. The Health Care Finance Commission, and
5. The Bureau of Insurance.

Following an in-depth study of each regulatory organization, the Committee on State Government eliminated the Board of Environmental Protection (BEP), the Land Use Regulation Commission (LURC), and the Maine Milk Commission (MMC) as regulatory organizations before which Public Advocate intervention is necessary. The reasons for excluding these agencies are as follows:

1. The decision making body composed of members representing the general public,
2. There is active general public participation in the proceedings of these agencies,
3. The public/consumer interest is very difficult to define because of the diversity of these interests, and
4. There are several organized public interest groups which represent different consumer interests and participate in the proceedings of these organizations.

While the Maine Milk Commission was considered by some to meet all of the criteria, the need for public advocacy in MMC proceedings did not appear as urgent as public advocacy in insurance rate and Health Care Finance Commission proceedings.

The Committee on State Government recommends Public Advocate participation in workers compensation proceedings, credit life and credit health insurance proceedings, and individual and group health proceedings before the Superintendent of Insurance. The Committee also recommends Public Advocate participation in Health Care Finance Commission proceedings. The reasons for the Committee's recommendations are as follows:

1. decisions with respect to insurance rates, policies, and contracts are made by one person in contrast to all other regulatory organizations composed of several decision makers,
2. the insurance industry is exempt from anti-trust law,
3. the health insurance industry and workers compensation insurance sector are dominated by an oligopoly in which 7-8% of all the firms provide most of the insurance policies,
4. the impact of the decisions of the Superintendent of Insurance have a significant impact on a large proportion of the population,
5. the information, data, and evidence in these proceedings are very complex, not readily available, and provided almost exclusively by the insurance industry; and
6. there is very limited public participation in these proceedings.

REPORT OF THE JOINT STANDING  
COMMITTEE ON STATE GOVERNMENT

TO

THE LEGISLATIVE COUNCIL AND THE SECOND REGULAR SESSION  
OF THE 111TH LEGISLATURE

WITH RESPECT TO

THE FEASIBILITY OF EXTENDING THE ROLE OF THE  
PUBLIC ADVOCATE TO OTHER RATE MAKING  
AND REGULATORY AGENCIES/ORGANIZATIONS

BACKGROUND OF STUDY

The Legislative Council of the 111th Legislature approved a study directing the Joint Standing Committee on State Government to study the need for and efficacy of extending the role of the Public Advocate to other rate-making and regulatory bodies. Currently, the Public Advocate is limited to the review and investigation of rates, service, organizational structures and operation of public utilities regulated by the Public Utilities Commission.

In addition, the Study order referred to three bills pertaining to this issue which were withdrawn during the First Regular Session of the 111th Legislature. These bills proposed Public Advocate Intervention in Milk Commission proceedings, and in proceedings before the Superintendent of Insurance, including workers' compensation insurance.

The Joint Standing Committee on State Government has been requested to report its findings and any necessary implementing legislation to the Second Regular Session of the 111th Legislature.

PURPOSE OF STUDY

The purpose of the Study is to determine whether there is a need for representation or advocacy of the public's perspectives before various regulatory boards, commissions, and other similar organizations. In addition, it is necessary to determine whether Public Advocate intervention will be effective or efficacious before these types of organizations for which a need of public representation has been established.

It is not the intent of the study or the Joint Standing Committee to conduct a study from the perspective of replacing the decision-makers of these organizations. The real issue is to determine whether there is satisfactory substantive evidence from the public's/consumers' perspective which the decision makers are able to take into consideration before they render a decision. In addition, it is necessary to determine whether Public Advocate intervention before these bodies is an effective and desirable method for introducing substantive evidence from the public point of view to the decision makers.

COMMITTEE STUDY PROCEDURE



The Joint Standing Committee on State Government established a subcommittee to undertake the basic research of the study and to develop recommendations for consideration by the entire committee. In order to accomplish its task, the subcommittee devised an approach that included:

1. A survey and analysis of public advocate organizations throughout the nation,
2. The development of criteria for the review and selection of regulatory boards, commission, and similar organizations for which Public Advocate involvement appeared to be feasible,
3. Analysis of the organization, composition, and decision making processes of each selected organization,
4. Evaluation of the policies and issues presented to each selected organization,
5. Separate meetings with representatives of the selected organizations to discuss the role of the Public Advocate with respect to each organization,
6. A public hearing for a general discussion and more in-depth understanding of public representation/advocacy before regulatory organizations selected by the subcommittee for further consideration.

#### PUBLIC ADVOCATE ACTIVITIES IN OTHER STATES

Table I in the Appendix describes the Activities of Public Advocates in other states who responded to the Subcommittee's survey. Of the 20 respondents (38 questionnaires-52% response) 10 indicated that the Public Advocate participates in other areas in addition to public utility rate and service regulation. In addition, 10 respondents indicated that the Public Advocate intervenes in insurance rate cases and 7 respondents indicated that the Public Advocate may intervene in any regulatory proceeding at which the public interest is involved. Nearly all of the respondents indicated that the Public Advocate may intervene in federal agency and court proceedings with respect to public utility and energy cases.

According to the responses to the questionnaire, the level of funding and the potential impact of agency decisions often determine the cases in which the Public Advocate chooses to intervene, including the states in which the Public Advocate is restricted to public utility cases. While it is very difficult to measure the effectiveness of the Public Advocate's activities in the states surveyed, some respondents indicated the cost savings to consumers or the reduction of restrictions resulting from their activities have been significant.

#### CRITERIA FOR EVALUATION

While the activities of the Public Advocate throughout the several states were being surveyed, the following criteria was established with respect to the selection of regulatory organizations for initial review and evaluation:

1. The decisions of the regulating agency/organization have a broad impact (affect a significant sector of the population),
2. The issues and policies established/decided by the agency/organization are complex and not readily understood,
3. The degree of public participation in cases before the agency/organization is limited, not effective, or overwhelmed by the resources of the regulated organizations,
4. The cost to the population of cases before the agency/organization is significant,
5. There is limited public access to the information, evidence, and data required for the regulating agency/organization to make a decision,
6. The decision maker(s) of the regulatory organization operate in a quasi-judicial forum in which the final decision is primarily based on the testimony provided at hearing or upon the record.

By applying the criteria to various regulatory organizations, the number of organizations for intensive study was narrowed to:

1. The Board of Environmental Protection
2. The Land Use Regulation Commission
3. The Main Milk Commission
4. The Health Care Finance Commission, and
5. The Bureau of Insurance.

Following an in-depth analysis of the policies, issues, operation, organizational structure, and decision-making process of each organization, the selected the Bureau of Insurance and the Health Care Finance commission were selected for further scrutiny and review. While the Maine Milk Commission was considered by some to meet all of the criteria for more intensive analysis, the need for active public advocacy in Milk Commission proceedings did not appear as urgent as public advocacy in insurance rate proceedings and Health Care Finance Commission proceedings.

#### ELIMINATION OF AGENCIES FOR FURTHER REVIEW

The Board of Environmental Protection and the Land Use Regulation Commission were eliminated from further consideration of Public Advocate intervention for the following reasons:

1. Currently there are effective and very active public interest groups representing and advocating the public interest. Specifically, the Natural Resources Council, the Audubon Society, local interest groups, and other public interest organizations actively participate in proceedings before these agencies. In addition, these "intervenor organizations" are effective and perform a role very similar to that of the Public Advocate.
2. It is very difficult to define the "consumer" or "public interest group" with respect to the issues before these two agencies. The

public interest may be the recreational industry, proponents of an economic development project, environmental preservation groups, etc.. It would be very difficult for the Public Advocate to define the interest that should be represented. In addition, there may be substantial conflicts in goals among various public interest groups.

3. There is significant and active public participation in cases before the BEP and LURC. In addition, these agencies conduct less formal hearings compared to some other regulatory organizations, and public sentiment is given considerably more weight than it is by agencies which operate much more in an adjudicatory capacity.

4. The members of the BEP and LURC are required to be broadly representative of the public and the State. As a result, decisions of these agencies are made by a relatively large number of persons with a wide range of perspectives.

While the Maine Milk Commission serves to protect a Maine industry that annually generates \$200,000,000 in total receipts, the urgency of public representation or advocacy before the commission is lessened to a degree by the following:

1. With the exception of the Commissioner of Agriculture, the Milk Commission is composed of consumers who are not financially connected with the milk industry.

2. The Milk Commission issues rate decisions, entitled orders, which are defined as rules. The Milk Commission, therefore, holds public hearings to obtain information and evidence, and additional public hearings are held to issue commission decisions. The public has an opportunity to participate in several public forums prior to the determination of milk prices.

3. Cumberland Farms, Inc., and some other groups have intervened before the Commission to present the public interest case.

#### SELECTION OF AGENCIES FOR FURTHER REVIEW

The Bureau of Insurance was selected for closer examination and evaluation with respect to public representation for rate making purposes for the following reasons:

1. The Insurance Industry in Maine grosses approximately a billion dollars per annum which exceeds the utility industry which grosses approximately \$750,000,000 per year.

2. The power of acceptance and rejection of insurance rates is vested in one individual, the Superintendent of Insurance, in contrast to other regulatory organizations composed of 3 or more decision makers.

3. Excluding workers' compensation rate cases, all other insurance rate filings may be accepted by the Superintendent of Insurance without a public hearing. In addition, the filings are confidential until the new rates take effect. Thus, public input in this situation does not exist unless the rate is rejected.

4. Insurance company data and evidence is extremely complex and inaccessible to a great extent to the general public. The General Public is discouraged from the limited participation afforded by the law because of the complexity of the issues and evidence.

5. Although there is competition within the insurance industry which distinguishes that industry from the monopolistic utility industry, the insurance industry, is primarily an oligopoly. On the average, 5 percent or less of the insurance firms in Maine write 50% or more of the insurance premiums in Maine.

6. The decisions of the Superintendent of Insurance have a very substantial impact on a vast majority of Maine residents. In particular, health insurance, workers' compensation insurance and property and casualty insurance are either necessitated by law or often considered necessary by the public.

The Health Care Finance Commission was initially rejected from further consideration as a regulatory organization to which the Public Advocate would present evidence on behalf of consumers. The Health Care Finance Commissioners have only recently been appointed, and the Commission has not yet begun to function. As a result, the Commission has not adopted rules or established any procedures. In addition, there is no track record upon which to base the need for Public Advocate involvement. The commissioners are required to be consumers with no financial or employment ties with the hospital industry.

Despite the reasons for not involving the Public Advocate in matters before the Health Care Finance Commission, there are a number of very profound reasons that more than justify extending the role of the Public Advocate to this commission.

1. Health insurance costs which are a primary concern to most Maine citizens are substantially affected by hospital costs. Hospital rates comprise more than 40 percent of health insurance costs and serve as the most significant factor in health insurance rates.

A. The second most significant factor in health insurance costs is physician services which comprise less than 20% of total health care costs.

2. The Health Care industry has a very substantial impact on most Maine residents.

A. The Health Care Finance Commission is vested with the authority to establish revenue limits for 42 hospitals in Maine with expected gross revenues of \$600,000,000 for 1983.

3. The primary source of information on which the commission will base its decisions is the data provided by the hospitals.

A. Although there is a basic formula by which revenue limits are established, adjustments incorporated in the formula are subject to various interpretations.

4. The information and evidence involved in the decision making process is complex and technical in nature.

A. This fact discourages public interest groups and individuals from participating in proceedings before other regulatory organizations. It is assumed that public participation in the proceedings of the Health Care Finance Commission will also be limited.

ARGUMENTS PRESENTED TO THE COMMITTEE IN OPPOSITION TO PUBLIC ADVOCATE INTERVENTION IN INSURANCE RATE CASES

Opposition to the extension of the role of the Public Advocate to insurance rate cases/filings before the Superintendent of Insurance is primarily centered in the insurance industry. In addition, the Superintendent of Insurance and former Commissioner of Business Regulation, Alfred Perkins, opposed the concept.

The arguments in opposition to the proposed extension of the Public Advocate, to the area of insurance include:

1. Excluding workers' compensation insurance, market competition keeps all other insurance rates as low and as competitive as possible,
2. It is essential to allocate additional resources to the Bureau of Insurance which is required to undertake complex tasks with inadequate resources. If the additional resources are provided to the Bureau of Insurance, the need for the Public Advocate is eliminated,
3. The Superintendent of Insurance is responsible to protect the public interest, and intervention by the Public Advocate would be a duplicate effort,
4. The real problem with respect to insurance rates is the problem of insolvency and that issue should be addressed before any other issue,
5. With respect to Workers' Compensation insurance, the trend is toward open market rating. Another alternative is a competitive state compensation insurance fund through which employers may purchase workmens compensation,
6. As a result of significant recent changes and possible future changes in the workers compensation insurance law, any proposed changes should be delayed to determine the effectiveness of these changes. The law relating to workers compensation insurance was substantially changed by the 111th Legislature in the First Regular Session. In addition, a special commission has been established to study workers' compensation insurance.

A. By allowing time for the recent and proposed changes in the law to take effect, the Committee can determine whether it is necessary to involve the Public Advocate in workers' compensation insurance.

## FINDINGS OF THE COMMITTEE

1. The Committee rejected the argument that free market competition serves to provide insurance to consumers at the lowest possible rates for several reasons.

A. Although there is competition among insurance companies with respect to the marketing of automobile, fire, and general liability and homeowners insurance policies, the rates of this type of insurance do not depend solely on market conditions. The degree of insurance company solvency, cash flow, and investment income play a role in the rate change requests of insurance companies. The Bureau of Insurance explained that insurance companies in the past have filed for higher insurance premium rates during times of temporary cash-flow shortages. In addition, filings for increased rates were submitted by companies which had investments in longer term securities at comparatively low interest rates during periods of rapidly rising interest rates and more lucrative investments. By increasing insurance premiums, the insurance companies attempted to compensate for investment decisions based on traditional market conditions.

B. The insurance industry is exempt from antitrust law which legalizes "collusion";

C. The public does not perceive competition as a force in the insurance industry, and the consumers' selections of insurance policies are based on considerations other than competitive rates;

D. With respect to health insurance, the following statistics indicated that an oligopoly exists. For example:

1) 8% of all the insurance companies providing group health policies in Maine write nearly 90% of all group health insurance premiums in the State

2) 5.6% of all insurance companies providing individual health insurance policies in Maine write nearly 70% of all individual health insurance premiums

3) Blue Cross/Blue Shield alone covers roughly 55 percent of all Maine people; and

E. With respect to Workers' Compensation insurance, 7% of the firms providing these types of policies in Maine write roughly 65% of all workers compensation insurance premiums.

2. Individuals do not purchase health insurance on the same basis as group insurance purchasers. Individuals lack the market power of group purchasers and, often times, are not aware of price/policy differentials among insurance companies.

A. The elderly, especially, are subject to problems with respect to purchasing individual insurance policies. Lacking knowledge about insurance as well as market power, the elderly and the "under-65" age groups perceive health insurance as a necessity, and use limited

resources to purchase it.

3. Credit life and credit health insurance are areas in which there has been abuse in the past. Since the public is generally ignorant of the insurance market in general, and in many cases easily persuaded by the credit institutions/agencies to purchase this type of insurance, the risk for abuse is greater than with some other types of insurance.

4. The Committee discerns the role of the Public Advocate to be significantly different from the role of the Superintendent of Insurance. The Superintendent of Insurance and the Bureau staff evaluate the evidence and data of the insurance companies to determine whether proposed rate changes are inadequate, excessive, or unjustly discriminatory. The Superintendent of Insurance is obligated to protect the solvency of the insurance industry. The evidence and perspective which the Superintendent evaluates are provided primarily from one very biased source, the insurance companies. With respect to all rate filings before the Superintendent, very seldom are perspectives and evidence provided by intervenors in opposition to those of the insurance companies.

5. The complex and technical nature of insurance issues, data, and evidence discourages public participation at workers' compensation insurance hearings and at other insurance rate hearings which are held only when the filings are rejected. For the most part, there are extremely few intervenors at insurance rate hearings.

6. The issue of protection of insurance companies and consumers from insolvency among insurance companies is not related to the issue of the study. The intent of the study is to determine whether there is a need for public representation or advocacy in insurance rate proceedings and whether the Public Advocate's intervention in these proceedings would be efficacious.

7. The issue of inadequate resources at the Bureau of Insurance is a genuine issue, and there is a real need for additional funding of the Bureau. This issue, however, is incongruent with the issue specified in the study order. Adequate resources for the Bureau of Insurance will enable the Superintendent and the bureau staff to better evaluate the evidence and data presented by a filing or at a hearing. Additional funding of the Bureau, however, does not assure public representation/advocacy in insurance rate proceedings.

8. Workers' compensation insurance rates, unlike many property and casualty insurance rates, contain many of the characteristics of a monopoly. One organization, the National Council on Compensation Insurance, presents a rate filing to the Superintendent of Insurance that proposes the same workers' compensation insurance rates for all insurance companies providing this type of insurance. Although individual insurance companies may present individual rate filings, this seldom occurs.

A. The resources available to the insurance companies to prepare and argue for proposed workers' compensation insurance rate changes are substantial. These resources are not limited to Maine firms but are available nationwide because the companies providing this type of insurance have nationwide and worldwide holdings.

1) The intervenors, employers and labor organizations have very limited resources to prepare and argue cases. These resources have been limited to individual contributions from sources in Maine.

2) The cost of preparing and arguing a workers' compensation insurance rate case is substantial, and this cost has been very onerous to Maine employers and laborers.

B. Since 1978, the decisions of the Superintendent of Insurance with respect to workers compensation insurance rate cases have been based on a procedural basis (a technicality) and not on the substantive arguments of the insurance companies or the intervenors. The proposed rate changes have been denied because the insurance companies did not provide all the evidence required by law.

9. The Committee rejects the argument that recent and proposed changes in the workers' compensation insurance law require future time to determine the need for Public Advocate intervention. The recent changes in the workers' compensation insurance law neither provided for public representation or advocacy nor encouraged increased public participation in these cases.

As a result, the Committee intends to base its determination on known evidence, and not on hypothetical assumptions.

10. The cost of health insurance is significantly affected by hospital costs which comprise more than 40% of all health care costs.

11. Health insurance costs are significantly affected by the degree of equity or inequity among payors.

A. For example, all payors and purchasers of hospital services do not pay the same rate for the identical service. Commercial insurers, self-insurers, and self-purchasers (individuals without insurance) pay "hospital" prices which are considerable higher than the prices charged to Blue Cross and Medicare/Medicaid. In addition, Medicare/Medicaid currently do not share the expenses for bad debts, and these programs do not pay the full costs of services to beneficiaries.

B. Hospitals located in an area with a large population of elderly and low income persons have significant financial problems compared to hospitals located in more affluent areas.

12. The cost of health insurance is significantly affected by hospital reorganization. In some cases, hospitals form subsidiaries or affiliated interests in which the more profitable services, such as medical laboratories, are incorporated. As a result, the hospitals are left with the "profit-draining" services that are used to justify higher hospital rates.

A. Two hospitals have established affiliated interests which invest hospital profits in private profit-making firms and other ventures. The income from these profit-making ventures has not been used to



contain hospital rates.

13. Hospital cost containment is an area of complex/technical issues and data that would most likely discourage the participation of public interest groups. In addition, the data and evidence are primarily generated by the hospitals and are not readily available to the general public.

#### RECOMMENDATIONS

The Committee of the Joint Standing Committee on State Government studying the role of the Public Advocate recommends legislation to authorize the Public Advocate to participate/intervene in

1. rate filings and adoption of rules proceedings pertaining to workers' compensation insurance,
2. rate filings and adoption of rules proceedings pertaining to medical expense reimbursement for health insurance policies/plans, except group health insurance policies and plans subject to collective bargaining agreements or to negotiation between employers and employees.
3. rate filings and adoption of rules proceedings pertaining to credit life and credit health insurance,
4. proceedings of the Health Care Finance Commission including the adoption of rules

In addition, the Committee recommends

1. to "sunset" the proposed extension of the role of the Public Advocate in July, 1987, and
2. to fund from the General fund the additional resources required by the Public Advocate to intervene in workers' compensation, health insurance, and Health Care Finance Commission proceedings. The cost to the General Fund will be roughly \$100,000 per annum.
3. that additional funding of the Bureau of Insurance is necessary to employ more well-qualified staff to evaluate the evidence and data provided by insurance companies and intervenors in insurance rate cases.

For purposes of clarification, the Committee proposes not to include within the scope of authority of the Public Advocate the following:

1. property and casualty insurance rate filings including fire, automobile, homeowners, and general liability insurance
2. individual disability insurance to include accident and sickness (short term disability) and long-term disability insurance.

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## APPENDIX

I. Role of the Public Advocate in Other States

II. Recommended Legislation

THE ROLE OF THE PUBLIC ADVOCATE  
IN OTHER STATES

NAME OF STATE	TITLE OF INDIVIDUAL OF NAME OF ORGANIZATION	AGENCY OF LOCATION	POWERS AND DUTIES: AUTHORITY TO INTERVENE/PARTICIPATE IN CASES BEFORE THE						OTHER
			PUBLIC UTILITIES COMMISSION	BUREAU OF INSURANCE	MILK COMMISSION	STATE/FEDERAL COURTS	FEDERAL AGENCIES E.G. FERC, FCC	ANY REGULATORY AGENCY AFFECTING PUBLIC INTEREST	
ARIZONA	CONSUMER UTILITIES RATE ADVOCACY DIV.	OFFICE OF THE ATTORNEY GENERAL	X			X	X		
CONNECTICUT	CONSUMER COUNSEL	DEPT OF PUBLIC UTILITY CONTROL	X			X			
FLORIDA	OFFICE OF PUBLIC	JNT COMMITTEE ON AUDIT OF THE STATE LEGISLATURE	X	X		X	X		DIRECTOR OF OFFICE APPOINTED BY JNT LEGISLATIVE COMMITTEE OF AUDIT.
HAWAII	CONSUMER ADVOCATE	DEPT OF COMMERCE & CONSUMER AFFAIRS	X			X	X		TRANSPORTATION RATES AND SERVICE
ILLINOIS	OFFICE OF CONSUMER AFFAIRS	OFFICE OF THE GOVERNOR	X			X	X		
	PUBLIC UTILITIES DIVISION	OFFICE OF THE ATTORNEY GENERAL	X	X		X	X	X	PARTICIPATION LIMITED BY BUDGET APPROPRIATION
KENTUCKY	CONSUMER PROTECTION DIVISION	OFFICE OF THE ATTORNEY GENERAL	X	X	X	X	X	X	PARTICIPATES IN AUTO, PROFESSIONAL FUND RAISING, FUNERAL, MAIL ORDER CS
MAINE	PUBLIC ADVOCATE	OFFICE OF THE GOVERNOR	X			X	X		
MASSACHUSETTS	PUBLIC UTILITIES DIVISION	OFFICE OF THE ATTORNEY GENERAL	X			X	X		
MICHIGAN	SPECIAL LITIGATION DIVISION	OFFICE OF THE ATTORNEY GENERAL	X	X	X	X	X	X	CONCENTRATES ON PUBLIC UTILITY CASES DUE TO BUDGET RESTRAINTS
MINNESOTA	DIVISION OF CONSUMER SERVICES	OFFICE OF THE ATTORNEY GENERAL	X			X	X		
MISSISSIPPI	OFFICE OF THE ATTORNEY GENERAL	DEPARTMENT OF JUSTICE	X	X	X	X	X	X	ACHIEVEMENTS MOSTLY IN THE AREA OF PUBLIC UTILITY CASES
NEW JERSEY	PUBLIC ADVOCATE	DEPARTMENT OF THE PUBLIC ADVOCATE (CABINET LEVEL POSITION)	X	X		X	X	X	PARTICIPATES IN RATE PROCEEDINGS RE: TRANSPORTATION, HOSPITALS, HEALTH, INSURANCE ETC.
NEW YORK	STATE CONSUMER PROTECTION BOARD	EXECUTIVE DEPARTMENT	X	X	X	X	X	X	EXEC-DIR REPRESENT CONSUMERS BE- FORE FED., STATE, LOCAL ADMIN & REGUL AGENCIES AT REQUEST OF PD
NORTH CAROLINA	PUBLIC STAFF	N.C. UTILITIES COMMISSION	X			X			

NAME OF STATE	TITLE OF INDIVIDUAL	AGENCY OF LOCATION	AUTHORITY TO INTERVENE/PARTICIPATE IN CASES BEFORE THE:						OTHER
			PUBLIC UTILITIES COMMISSION	BUREAU OF INSURANCE	MILK COMMISSION	STATE/FEDERAL COURTS	FEDERAL AGENCIES RE: FERC, FCC	ANY REGULATORY AGENCY AFFECTING PUBLIC INTEREST	
OHIO	OFFICE OF CONSUMERS' COUNSEL	PUBLIC UTILITIES COMMISSION	X			X			DIRECTOR APPOINTED BY CONSUMERS' COUNCIL
PENNSYLVANIA	OFFICE OF CONSUMER ADVOCATE	DEPT OF ATTORNEY GENERAL	X			X	X		CONSUMER ADVOCATE APPOINTED E. AG & CONFIRMED BY SENATE. AG APPROVES STAFF APPOINTMENTS
SOUTH CAROLINA	ADMINISTRATOR & CONSUMER ADVOCATE	DEPARTMENT OF CONSUMER AFFAIRS	X	X	X	X	X	X	RESOLVE CONSUMER COMPLAINTS STATE- WIDE. 30,000 PHONE CALLS & 6,000 WRITTEN COMPLAINTS PER YEAR-MANY DIFFERENT ISSUES.
UTAH	COMMITTEE OF CONSUMER SERVICES		X			X			REPRESENT RESIDENTIAL & SMALL BUSINESS CONSUMERS.
VIRGINIA	DIVISION OF CONSUMER COUNSEL	OFFICE OF THE ATTORNEY GENERAL	X	X		X	X		
WASHINGTON, D.C.	OFFICE OF THE PEOPLE'S COUNSEL	INDEPENDENT AGENCY PHYSICALLY LOCATED IN THE PUBLIC SERVICE COM	X	X		X	X		PARTICIPATES IN D.C. TRANSPORTATION RATE CASES: E.G. TAXICABS ETC

STATE OF MAINE  
111TH LEGISLATURE  
SECOND REGULAR SESSION

AN ACT TO AUTHORIZE THE PUBLIC ADVOCATE TO INTERVENE IN PROCEEDINGS PERTAINING TO HEALTH INSURANCE AND WORKERS COMPENSATION BEFORE THE SUPERINTENDENT OF INSURANCE AND IN PROCEEDINGS OF THE HEALTH CARE FINANCE COMMISSION.

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

Sec. 1. 5 MRSA, Part 13-A, Chapter 339 is enacted to read:

ALL UNDERLINED

PART 13-A  
ROLE OF THE PUBLIC ADVOCATE  
CHAPTER 339  
PUBLIC ADVOCATE

§5101. Appointment of the Public Advocate

The Public Advocate shall be appointed by the Governor, subject to review by the legislative committee having jurisdiction over State Government and to confirmation by the Legislature; and shall serve at the pleasure of the Governor. Any vacancy shall be filled by similar appointment.

§5102. Definitions. For the purpose of this chapter the following words shall have the following meanings unless a different meaning clearly appears from the context.

1. Credit insurance. Credit insurance means credit life and credit health insurance as defined in 24-A MRSA, Chapter 37.

2. Health Insurance. Health insurance means individual health insurance as defined in 24-A MRSA, Chapter 33, group health insurance as defined in 24-A MRSA, Chapter 35 except group health insurance policies and contracts negotiated through collective bargaining agreements, and health insurance provided by nonprofit hospital or medical service organizations as defined in 24 MRSA, Chapter 19.

3. Superintendent. Superintendent means the Superintendent of Insurance as defined in Title 24-A.

4. Workers Compensation. Workers Compensation means workers compensation insurance including insurance policies, contracts, rate filings, regulations, and proceedings within the jurisdiction of the Superintendent of Insurance as provided in 24-A MRSA and Title 39. Workers compensation does not refer to matters before the Workers Compensation Commission.

§5103. Scope of Authority. The authority and responsibilities of the Public Advocate shall extend to matters before the Public Utilities Commission, credit insurance matters, health insurance matters, workers compensation matters, and credit insurance before the Superintendent of Insurance, and proceedings before the Health Care Finance Commission.

§5104. Duties and Powers.

1. Matters before the Public Utilities Commission. The duties and responsibilities of the Public Advocate with respect to public utilities 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 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.

2. Health Insurance, credit insurance and Workers' Compensation Insurance Matters before the Superintendent of Insurance. The Public Advocate shall represent the using and consuming public, including employers, in health insurance matters within the jurisdiction of the Superintendent of Insurance, the using and consuming public in credit insurance matters within the jurisdiction of the Superintendent, and employers and employees in workers' compensation insurance matters within the jurisdiction of the Superintendent of Insurance. The Public Advocate shall not be involved in any health insurance proceedings relating to group health policies or rates negotiated between employers and employees through collective bargaining agreements. The duties of the Public Advocate shall include but not be limited to:

A. Reviewing and investigating contracts, policies, rate filings, and regulations as they relate to health insurance, credit insurance, and workers compensation;

B. Petitioning the Superintendent to initiate proceedings to review, investigate, and take appropriate action with respect to contracts, policies, rate filings, and regulations relating to health insurance, credit insurance, and workers compensation insurance;

C. Intervening in proceedings and hearings before the Superintendent with respect to health insurance, credit insurance, and workers' compensation insurance. The Public Advocate, in these cases, shall be deemed a party;

D. Proposing rates, contract or policy provisions, and regulations as they relate to health insurance, credit insurance, and workers compensation insurance to the Superintendent;

E. Intervening and participating in any proceedings before state and federal agencies and courts which, in the opinion of the Public Advocate affects the using and consuming public of health insurance, credit insurance or employers and employees with respect to workers compensation;

F. Investigating any complaints which, in the opinion of the Public Advocate affect the using and consuming public of health insurance, credit insurance and employers and employees with respect to workers compensation insurance; and

G. Reviewing investigating, and making appropriate recommendations to the Superintendent with respect to securities, investments, transactions, mergers, consolidations, and accounting procedures of health insurance companies, credit insurance companies, non-profit hospital or medical service organizations and insurance companies offering workers' compensation insurance as they relate to the rates and policy provisions.

3. Matters before the Health Care Finance Commission. The Public Advocate shall represent the using and consuming public ultimately affected by the decisions of the Health Care Finance Commission. The duties of the Public Advocate include

A. Reviewing, investigating, and making appropriate recommendations to the Health Care Finance Commission with respect to matters, including proposed rules before this commission.

B. Investigating complaints affecting the using and consuming public generally, or particular groups thereof, and, where appropriate, make recommendations to the Health Care Finance Commission with respect to such complaints;

C. Petitioning the Health Care Finance Commission to initiate proceedings to review, investigate and take appropriate action with respect to matters within the jurisdiction of this Commission

D. 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 this commission, appeals from orders of the commission, or proceedings before state and federal agencies and courts in which the subject matter of the action ultimately affects the using and consuming public.

4. Preparation of Annual Report. The Public Advocate shall prepare and submit an annual report to the Governor and to the Legislative Committee having jurisdiction over state government by December 31 of each year. This report shall describe the activities and achievements of the Public Advocate as well as the problems encountered by the Public Advocate. Reports shall be made available to all legislators upon request.

§5105. Appeal from orders or decisions. The Public Advocate has the same rights of appeal from orders or decisions of the Public Utilities Commission, the Superintendent of Insurance, and the Health Care Finance Commission to



which he has been a party as other parties to the proceedings.

§5106. 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. All 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 Public Utilities or Health Care Finance Commissions or the Superintendent of Insurance.

A. The professional employees of the Public Advocate shall serve during the pleasure of the Public Advocate; all other employees of the Public Advocate shall be subject to the Personnel Law.

§5107. 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.

§5108. 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, the Health Care Finance Commission or the Superintendent of Insurance, or to appeal from the orders or decisions of these organizations.

§5109. Expert witnesses. The Public Advocate may employ expert witnesses and pay appropriate compensation and expenses to employ such witnesses.

§5110. 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.

§5111. Information from regulated organizations. Utilities, insurance companies, non-profit hospital or medical service organizations and hospitals 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 State agencies described in §5104, 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 State agencies described in §5104, and, in addition, may petition these agencies, for good cause shown, to be allowed such other information as may be necessary to carry out the purposes of this section.

§5112. Conflicts of Interest. In addition to the limitations of 5 MRS §18, neither the Public Advocate nor any employee of the Public Advocate shall have any official connection or relation with or hold any stock or securities in any public utility as defined in 35 MRS §15, any insurance company offering health insurance within the scope of the Public Advocate's duties, or credit insurance, or workers compensation insurance, or any hospital operating within this State, nor shall the Public Advocate render any professional service against any of the organizations described in this

section or shall he be a member of a firm which renders such services.

Sec. 2. Title 5, Chapter 339 is repealed on July 1, 1987, unless re-enacted by the Legislature. If this chapter is repealed on July 1, 1987, 35 MRS §1-A is re-enacted to read as it read immediately prior to the effective date of this Act.

Sec. 3. 22 MRS §400 is enacted to read:

ALL UNDERLINED

§400. Role of the Public Advocate. The Public Advocate shall have the authority to participate or act as an intervenor in any proceedings of the commission. The Public Advocate, among other duties, may

1. Review, investigate, and make recommendations. Review, investigate and make appropriate recommendations to the commission with respect to all matters within the jurisdiction of the commission.

2. Investigate complaints. Investigate complaints that ultimately affect the using and consuming public or particular groups thereof, and make recommendations to the commission with respect to these complaints.

3. Petition the commission to initiate proceedings. Petition the commission to initiate proceedings to review, investigate, and take appropriate action with respect to all matters within the jurisdiction of the Commission.

4. Appeal orders or decisions of the Commission. Appeal orders or decisions of the commission to state and federal agencies and courts.

Sec. 4. 24 MRS §2321, sub-§1, as last amended by PL 1979, c. 558, §§1, 2 is amended to read:

1. Filing of rate information. Every nonprofit hospital and medical service organization shall file with the Superintendent, ~~except as to group subscriber and membership contracts,~~ contracts, every rate, rating formula and every modification of any of the foregoing which it proposes to use. Copies of all filings and information required by this section shall also be provided simultaneously by every nonprofit hospital and medical service organization to the Public Advocate. Every such filing shall be made not less than 60 days in advance of the stated effective date unless the such 60-day requirement is waived by the superintendent, and the effective date may be suspended by the superintendent for a period of time not to exceed 30 days.

Sec. 5. 24 MRS §2327, as enacted by PL 1979, c. 558, §5, is repealed.

Sec. 6. 24 MRS §2332 is enacted to read:

ALL UNDERLINED

§2332. Role of the Public Advocate. The provisions of this chapter pertaining to health insurance rates, contracts, policies, rules, and proceedings are subject to the provisions of title 5, Chapter 339.

Copies of all information required by the Superintendent shall be provided simultaneously by non-profit hospital or medical service organizations to the Public Advocate as provided in Title 5, Chapter 339.

Sec. 7. 24-A MRSA §237 is enacted to read:

ALL UNDERLINED

§237. Role of the Public Advocate. The provisions of this Title pertaining to insurance rates, policies, contracts, rules, and proceedings are subject to the provisions of Title 5, Chapter 339.

Sec. 8. 24-A MRSA §2412, sub-§1, is amended to read:

§2412. Filing, approval of forms

1. No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or endorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this State, unless the form has been filed with and approved by the superintendent. This provision shall not apply to surety bonds, or to specially rated inland marine risks, or to policies, riders, endorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder or certificate holder. Copies of policies and contract forms and any other information required by this section shall be provided simultaneously by insurance companies to the Public Advocate as these policies, contracts, and information pertain to health insurance, credit insurance and workers compensation insurance as provided in this Title. As to group insurance policies effectuated and delivered outside this State but covering persons resident in this State, the group certificates to be delivered or issued for delivery in this State shall be filed, for the superintendent's information only, with the superintendent at his request. As to forms for use in property, marine other than wet marine and transportation insurance, casualty and surety insurance coverages, the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

Sec. 9. 24-A MRSA §2701, sub-§2, as enacted by PL 1969, c. 132, §1, is amended to read:

2. Any group or blanket policy; that is negotiated through collective bargaining agreements;

Sec. 10. 24-A MRSA §2839, as amended by PL 1979, c. 663, §149 is repealed and replaced to read:

ALL UNDERLINED

§2839-A. Rate filings on group health insurance policies

1. Filing of rate information. Every insurer issuing group health insurance policies for delivery in this State shall file with the superintendent, every rate, rating formula and classification of risks pertaining to group health policies and every modification of any of the foregoing which it proposes to use. Every insurer shall file with the superintendent, every rate and rating formula and every modification of any of the foregoing which it proposes to use. Every filing shall state the effective date thereof. Every filing shall be made not less than 60 days in advance of the stated effective date unless 60-day requirement is waived by the superintendent, and the effective date may be suspended by the superintendent for a period of time not to exceed 30 days.

A. Copies of the information required by this subsection and subsection 2 shall be filed simultaneously by every insurer with the Public Advocate.

2. Rate filing; public information. When a filing is not accompanied by the information upon which the insurer supports the filing, or the superintendent does not have sufficient information to determine whether the filing meets the requirements that rates shall not be excessive, inadequate or unfairly discriminatory, the superintendent shall require the insurer to furnish the information upon which it supports the filing. A filing and supporting information shall be a public record within the meaning of Title 1, section 402, subsection 3 and shall become part of the official record of any hearing held pursuant to section 2736-A.

3. Exclusions. the provisions of this section shall not apply to group health insurance policies, contracts and rates subject to negotiation through collective bargaining agreements.

Sec. 11. 24-A MRSA §2839-B, is enacted to read:

ALL UNDERLINED

§2839-B. Hearing

If at any time the superintendent has reason to believe that a filing does not meet the requirements that rates shall not be excessive, inadequate or unfairly discriminatory or that the filing violates any of the provisions of chapter 23, he shall cause a hearing to be held.

Hearings held under this section shall conform to the procedural requirements set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

Sec. 12. 24-A MRSA §2739-C, is enacted to read:

ALL UNDERLINED

2839-C. Order

The superintendent shall issue his order or decision within 30 days after the close of the hearing. In his order or decision, the superintendent shall either approve or disapprove the rate filing. If he disapproves the rate filing, the superintendent shall establish the date on which the filing is no longer effective, specify the filing he would approve and authorize the insurer to submit a new filing in accordance with the terms of his order or decision.

The Public Advocate shall have the authority to appeal a decision of the Superintendent as a party to the proceedings to the courts of the State.

Sec. 13. 24-A MRS A §2858, sub-§3, is amended to read:

3. Notice of disapproval; waiting period. If the superintendent notifies the insurer that the form or rates are disapproved or that the Public Advocate has requested a hearing, it is unlawful thereafter for such insurer to issue or use such form or rates. In such notice, the superintendent shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, or any application, endorsement or rider or rate shall be issued or used until the expiration of 30 days after it has been so filed, unless the superintendent shall give his prior written approval thereto, and if the Public Advocate has not appealed the policy provisions or rates to the Superintendent.

Sec. 14. 39 MRS A §5 is enacted to read:

ALL UNDERLINED

§5. Role of the Public Advocate. The provisions of this Title pertaining to matters within the jurisdiction of the Superintendent of Insurance shall be subject to the provisions of Title 5, Chapter 339.

Copies of all information, including information defined in §23, sub-§10, required by the Superintendent of Insurance shall be simultaneously provided by insurance companies and insurance rating organizations to the Public Advocate in accordance with Title 5, Chapter 339.

Section 15. Appropriation. There is appropriated from the General fund for fiscal year 1984-85, the following monies to carry out the purposes of this Act.

1984-85

Executive Department

Office of the Public Advocate

Personal Services (2)	\$ 46,601
All other	50,997
Capital Expenditures	6,067
Total Expenditures	\$103,665

STATEMENT OF FACT

The purpose of this legislation is to provide the Superintendent of Insurance with additional information and a different perspective from that of insurance companies with respect to rate hearings, and other proceedings pertaining to health insurance, credit insurance, and workers' compensation insurance. This bill does not replace or alter in any way the decision making authority of the Superintendent of Insurance.

The Public Advocate may participate in hearings and proceedings before the Superintendent except property and casualty insurance, life insurance, and group health plans subject to collective bargaining agreements. Insurance companies are required to file information with the Public Advocate who may request the Superintendent to hold a hearing.

This bill also allows the Public Advocate to intervene or participate in all proceedings before the Health Care Finance Commission. The purpose of this provision is to enable the Public Advocate to become involved in proceedings that have the greatest impact on health insurance costs and thereby help limit these costs to users.