

1 H. BILL No. 395
 2 INTRODUCED BY Julie Vincent May

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT THE
 5 CONSUMER COUNSEL HAS DISCOVERY POWERS IN CONTESTED CASES
 6 THAT ARISE BEFORE ANY ADMINISTRATIVE AGENCY OF THE STATE OF
 7 MONTANA; AMENDING SECTION 70-707, R.C.M. 1947."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 70-707, R.C.M. 1947, is amended to
 11 read as follows:

12 "70-707. Powers and duties of consumer counsel --
 13 annual report. The consumer counsel:

14 (1) may appear at public hearings conducted by the
 15 commission, as the representative of the consuming public,
 16 on all matters which come before the commission which in any
 17 way affect the consuming public, and shall have all the
 18 rights and powers of any party in interest appearing before
 19 the commission regarding examination and cross-examination
 20 of witnesses, presentation of evidence and other matters;

21 (2) may institute proceedings before the commission
 22 against regulated companies;

23 (3) has all the investigatory powers necessary to
 24 perform his duties as provided herein ~~and all discovery~~
 25 ~~powers sanctioned by the Montana Rules of Civil Procedure~~

1 ~~and the Montana Administrative Procedure Act, including~~
 2 ~~discovery powers similar to those contemplated by the~~
 3 ~~Montana rules of civil procedure for court cases, which may~~
 4 ~~be exercised unless discovery is otherwise provided for by~~
 5 ~~agency rules of practice and procedure. These discovery~~
 6 ~~powers include the power to take depositions, under oath, of~~
 7 ~~any officer, director, manager, consultant, employee, or~~
 8 ~~attorney of record for any regulated company in a pending~~
 9 ~~administrative contested case; the power to interpose~~
 10 ~~written interrogatories to any officer, director, manager,~~
 11 ~~consultant, employee, or attorney of record for any~~
 12 ~~regulated company in any pending case, answerable within a~~
 13 ~~reasonable period of time; the power to request the~~
 14 ~~production of relevant documents by any regulated company in~~
 15 ~~any pending case; and the power to demand admissions of fact~~
 16 ~~from any regulated company in a pending administrative~~
 17 ~~contested case. The discovery powers of the consumer counsel~~
 18 ~~exercisable before any state administrative agency may be~~
 19 ~~enforced by that agency by refusing to grant the relief~~
 20 ~~requested by the regulated company or by continuing the~~
 21 ~~hearing on the application of the regulated company until~~
 22 ~~the regulated company responds to discovery. The regulated~~
 23 ~~company may object to specific interrogatories, requests, or~~
 24 ~~demands, and the agency has the power, subject to judicial~~
 25 ~~review, to grant relief from improper or oppressive~~

1 ~~discovery sought by the consumer counsel by way of orders~~
 2 ~~limiting discovery or protecting witnesses or proprietary~~
 3 ~~documents from discovery.~~

4 (4) may examine in any commission proceedings under
 5 oath any officer, director, manager, or employee of any
 6 regulated company and inspect the business and corporate
 7 records of any regulated company in accordance with the law
 8 to aid in the exercise of his duties;

9 (5) may institute, intervene in, or otherwise
 10 participate in appropriate proceedings in the state and
 11 federal courts and administrative agencies in the name of
 12 and on behalf of the utility and transportation consuming
 13 public of the state of Montana or substantial elements
 14 thereof including review of decisions rendered by, or
 15 failure to act by the commission and applications for
 16 restraining orders pending the investigation of and decision
 17 upon a matter by the commission, pursuant to section
 18 93-4215.

19 (6) shall meet and confer with members or
 20 representatives of the consuming public at such times and
 21 places as he determines appropriate;

22 (7) shall prepare and submit a yearly report and such
 23 other interim reports he determines advisable concerning his
 24 activities during the year and may recommend appropriate
 25 remedial legislation to the committee; and

1 (8) has such other powers necessary to fully represent
 2 the interests of the consuming public before the commission
 3 as may be granted and promulgated by the committee in
 4 accordance with the provisions of the Montana Administrative
 5 Procedure Act."

-End-

Approved by Committee
on Business and Industry

HOUSE BILL NO. 395

INTRODUCED BY QUILLICI, VINCENT, MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT THE CONSUMER COUNSEL HAS DISCOVERY POWERS IN CONTESTED CASES THAT ARISE BEFORE ANY ADMINISTRATIVE AGENCY OF THE STATE OF MONTANA; AMENDING SECTION 70-707, R.C.M. 1947; AND REPEALING SECTION 70-708, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-707, R.C.M. 1947, is amended to read as follows:

"70-707. Powers and duties of consumer counsel — annual report. The consumer counsel:

(1) may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

(2) may institute proceedings before the commission against regulated companies;

(3) has all the investigatory powers necessary to perform his duties as provided herein ~~and all discovery~~

~~powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act; AND ALL DISCOVERY POWERS SANCTIONED BY THE MONTANA RULES OF CIVIL PROCEDURE AND THE MONTANA ADMINISTRATIVE PROCEDURE ACT. including discovery powers similar to those contemplated by the Montana rules of civil procedure for court cases, which may be exercised unless discovery is otherwise provided for by agency rules of practice and procedure. These discovery powers include the power to take depositions, under oath, of any officer, director, manager, consultant, employee, or attorney of record for any regulated company in a pending administrative contested case; the power to interpose written interrogatories to any officer, director, manager, consultant, employee, or attorney of record for any regulated company in any pending case, answerable within a reasonable period of time; the power to request the production of relevant documents by any regulated company in any pending case; and the power to demand admissions of fact from any regulated company in a pending administrative contested case. The discovery powers of the consumer counsel exercisable before any state administrative agency may be enforced by that agency by refusing to grant the relief requested by the regulated company or by continuing the hearing on the application of the regulated company until the regulated company responds to discovery. The regulated~~

1 ~~company may object to specific interrogatories, requests, or~~
 2 ~~demands, and the agency has the power, subject to judicial~~
 3 ~~review, to grant relief from improper or oppressive~~
 4 ~~discovery sought by the consumer council by way of orders~~
 5 ~~limiting discovery or protecting witnesses or proprietary~~
 6 ~~documents from discovery. IT IS THE SPECIFIC INTENT OF THIS~~
 7 ~~SECTION TO PROVIDE THE AUTHORITY AND AVAILABILITY OF THE~~
 8 ~~PROCESS OF DISCOVERY TO THE CONSUMER COUNSEL IN~~
 9 ~~ADMINISTRATIVE CONTESTED-CASE PROCEDURE. VIOLATIONS OF~~
 10 ~~DISCOVERY PROCEDURE SHALL BE HEARD AND ADMINISTERED BY THE~~
 11 ~~DISTRICT COURT. IN THE EVENT OF AN APPEAL TO DISTRICT COURT~~
 12 ~~FOR ENFORCEMENT OF DISCOVERY PROCEDURES, THE TIME LIMITS~~
 13 ~~IMPOSED BY SECTION 70-113, R.C.M. 1947, SHALL BE SUSPENDED~~
 14 ~~PENDING ORDER OF THE DISTRICT COURT.~~

15 (4) may examine in any commission proceedings under
 16 oath any officer, director, manager, or employee of any
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5 (6) shall meet and confer with members or
 6 representatives of the consuming public at such times and
 7 places as he determines appropriate;

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 13 the interests of the consuming public before the commission
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 15 accordance with the provisions of the Montana Administrative
 16 Procedure Act."

17 SECTION 2. REPEALER. SECTION 70-708, R.C.M. 1947, IS
 18 REPEALED.

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