

SENATE BILL NO. 444

2/16 Introduced  
2/18 Referred to Natural Resources  
2/22 Hearing  
2/23 Committee Report-Bill Do Pass  
2/23 Statement of Intent Attached  
2/26 2nd Reading indefinitely postponed

1 *Senate* BILL NO. *444*  
 2 INTRODUCED BY *Walter* *Richard* *Yell*  
 3 *Richard* *Yell*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PUBLIC  
 5 SERVICE COMMISSION TO ADOPT RULES TO RECOGNIZE A CITIZENS'  
 6 UTILITY ORGANIZATION THAT MAY REPRESENT AND ADVOCATE THE  
 7 INTERESTS OF RESIDENTIAL UTILITY CONSUMERS AND TO ALLOW THE  
 8 ORGANIZATION ACCESS TO UTILITY CUSTOMER BILLING; PROVIDING  
 9 CERTAIN RESTRICTIONS AND LIMITATIONS; AND ESTABLISHING OTHER  
 10 REQUIREMENTS."  
 11

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

13 Section 1. Definitions. For the purposes of [this  
 14 act], the following definitions apply unless the context  
 15 requires otherwise:

- 16 (1) "Board of directors" means the duly elected board  
 17 of directors of the citizens' utility organization  
 18 recognized under [this act].
- 19 (2) "Campaign contribution" means contribution as  
 20 defined in 13-1-101(3).
- 21 (3) "Campaign expenditure" means expenditure as  
 22 defined in 13-1-101(7).
- 23 (4) "Commission" means the public service commission  
 24 provided for in 2-15-2602.
- 25 (5) "Corporation" means the citizens' utility

1 organization recognized under rules adopted by the  
 2 commission as required by [this act].

3 (6) "Enclosure" means a card, leaflet, envelope, or  
 4 combination thereof furnished by the citizens' utility  
 5 organization pursuant to [section 13].

6 (7) "Immediate family" of a person means the person's  
 7 spouse and legal dependents.

8 (8) "Interim board" means the temporary board of  
 9 directors provided for in [section 9].

10 (9) "Member" means any person who satisfies the  
 11 requirements for membership in the corporation organized  
 12 under [section 3].

13 (10) "Organization" means the corporation as defined in  
 14 subsection (5).

15 (11) "Periodic customer billing" means a demand for  
 16 payment that is mailed to a residential utility consumer by  
 17 a public utility on a monthly or other regular basis.

18 (12) "Public utility" means a public utility, as  
 19 defined in 69-3-101, that provides utility service to the  
 20 public. The term does not include a cooperative association  
 21 organized under Title 35 for the purpose of generating,  
 22 distributing, or furnishing electrical energy or telephone  
 23 service.

24 (13) "Residential utility consumer" means any person in  
 25 the state whose residence is furnished utility service by a



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1 public utility.

2 (14) "Utility district" means those districts  
3 established in 69-1-104.

4 (15) "Utility service" means electricity, natural gas,  
5 and telephone service supplied by a public utility.

6 Section 2. Citizens' utility organization -- adoption  
7 of rules to recognize. (1) The commission shall adopt rules  
8 to recognize an appropriate citizens' utility organization  
9 established as a nonprofit corporation to represent and  
10 advocate the interests of residential utility consumers as  
11 further described in [this act].

12 (2) Any qualified organization seeking to gain  
13 recognition as the citizens' utility organization pursuant  
14 to subsection (1) must submit an application to the  
15 commission within 90 days following the adoption of rules  
16 under [this act]. Fifteen days following the conclusion of  
17 the 90-day application period, the commission shall select  
18 one qualified applicant as the citizens' utility  
19 organization provided for under [this act].

20 Section 3. Membership -- formation -- dissolution.

21 (1) The citizens' utility organization must be a nonprofit  
22 corporation organized pursuant to the provisions of Title  
23 35, chapter 2. The membership of the organization must  
24 consist of all residential utility consumers 16 years of age  
25 or older who have contributed to the organization an annual

1 membership fee.

2 (2) The organization must have a board of directors  
3 comprised of two members from each utility district. The  
4 board of directors shall serve without salary, but each  
5 director may be entitled to reimbursement for actual and  
6 necessary expenses.

7 (3) Notwithstanding any other provision of [this act],  
8 if the organization does not attain a paid membership of  
9 1,000 persons with at least 50 members in each utility  
10 district within 2 years after obtaining recognition as the  
11 citizens' utility organization by the commission as required  
12 under [section 2], the commission shall rescind recognition  
13 of the organization and deny the organization access to  
14 utility customer billing as provided for in [sections 13  
15 through 15].

16 Section 4. Powers and duties. (1) The citizens'  
17 utility organization shall:

18 (a) represent and promote the interests of the  
19 residential utility consumers of the state;

20 (b) inform residential utility consumers about the  
21 existence of the organization;

22 (c) maintain tax-exempt status under state and federal  
23 law;

24 (d) initiate, intervene in, or otherwise participate  
25 as necessary on behalf of residential utility consumers in

1 any proceeding that may affect the interests of the  
2 consumers;

3 (e) require a restriction on campaign contributions  
4 and campaign expenditures allowed for a candidate in an  
5 election to the board of directors; and

6 (f) adopt bylaws, not inconsistent with any rules of  
7 the commission or with any provision of [this act], for the  
8 administration and regulation of the affairs of the  
9 corporation.

10 (2) In addition, the citizens' utility organization  
11 may:

12 (a) solicit and accept gifts, loans, grants, or other  
13 aid in order to support activities concerning the interests  
14 of residential utility consumers, except that it may not  
15 accept gifts, loans, or other aid from any public utility or  
16 from any person directly employed by a public utility;

17 (b) conduct, support, and assist research surveys,  
18 investigations, and other activities concerning the  
19 interests of residential utility consumers;

20 (c) support or oppose ballot propositions concerning  
21 matters that affect the interests of residential utility  
22 consumers;

23 (d) represent the interests of residential utility  
24 consumers before legislative bodies, administrative  
25 agencies, state and federal courts, the commission, and

1 other public bodies; and

2 (e) exercise all other rights and powers that are  
3 reasonably necessary for the effective representation and  
4 protection of the interests of residential utility  
5 consumers.

6 Section 5. Board of directors. (1) The term of office  
7 for members of the board of directors is 3 years, and no  
8 member of the board may serve more than two consecutive full  
9 terms.

10 (2) No present employee, director, shareholder,  
11 bondholder, consultant, attorney, or accountant of any  
12 public utility or spouse of any such person and no employee  
13 of the public service commission is eligible to serve as a  
14 director. No candidate for election to the board of  
15 directors may hold an elective public office or be a  
16 candidate for an elective public office.

17 (3) A candidate for the board of directors must:

18 (a) be a resident of the district that he seeks to  
19 represent;

20 (b) be a member of the organization;

21 (c) submit a statement of personal background and  
22 positions on issues relating to regulated public utilities  
23 and a statement of financial interest, as required under  
24 [sections 7 and 8]; and

25 (d) meet such additional nomination and election

1 qualifications as may be established by the organization.

2 Section 6. Duties of directors. In addition to those  
3 duties assigned to the board of directors under the articles  
4 of incorporation or bylaws of the organization, the board of  
5 directors shall:

6 (1) make all reports, studies, and other information  
7 compiled by the organization and all data pertaining to the  
8 finances of the corporation available for public inspection  
9 during regular business hours;

10 (2) maintain for inspection by the membership  
11 quarterly statements of the financial and substantive  
12 operations of the organization;

13 (3) cause the organization's books to be audited by a  
14 certified public accountant at least once each fiscal year  
15 and make the audit available to the general public;

16 (4) make available for public inspection, as soon as  
17 practicable after the close of the fiscal year, an annual  
18 report of the organization's financial and substantive  
19 operations;

20 (5) report to the membership at an annual membership  
21 meeting the past and projected activities and policies of  
22 the organization;

23 (6) make available to each member upon request all  
24 papers, records, documents, and other materials in the  
25 possession of the organization, subject to guidelines

1 established by the board to protect personal privacy.

2 Section 7. Statement of personal background and  
3 positions. A candidate for election to the board of  
4 directors shall submit to the board of directors, not later  
5 than 60 days prior to the election, on a form to be provided  
6 by the board of directors, a statement concerning his  
7 personal background and positions on issues relating to  
8 regulated public utilities or the operations of the  
9 citizens' utility organization. The statement must contain  
10 an affirmation, subject to penalty of false swearing, that  
11 the information contained in the statement of personal  
12 background is true and complete and that the candidate meets  
13 the qualifications prescribed for directors.

14 Section 8. Statement of financial interests. A  
15 candidate for election to the board of directors whose  
16 nomination is certified shall submit to the board of  
17 directors, not later than 60 days prior to the election,  
18 upon a form to be provided by the board of directors, a  
19 statement of financial interests. The statement of financial  
20 interests, which must be open for public inspection, must  
21 include the following information:

22 (1) the occupation, employer, and position at place of  
23 employment of the candidate and of his immediate family  
24 members;

25 (2) a list of all financial interests, corporate and

1 organizational directorships or other offices, and fiduciary  
2 relationships held in the past 3 years by the candidate and  
3 by his immediate family members;

4 (3) the name of any creditor to whom the candidate or  
5 a member of the candidate's immediate family owes \$3,000 or  
6 more, and the amount owed;

7 (4) the name of any corporation in which the candidate  
8 holds a security, the current market value of which is  
9 \$3,000 or more, and the dollar value of such security;

10 (5) an affirmation, subject to penalty of false  
11 swearing, that the information contained in the statement of  
12 financial interests is true and complete.

13 Section 9. Appointment of interim board of directors.

14 (1) The governor shall appoint an interim board of  
15 directors for any qualified organization wishing to submit  
16 an application to the commission for the purpose of gaining  
17 recognition as the citizens' utility organization.

18 (2) The interim board of directors shall consist of:

19 (a) three members appointed from a list of five or  
20 more names submitted by the president of the senate;

21 (b) three members appointed from a list of five or  
22 more names submitted by the speaker of the house of  
23 representatives;

24 (c) two members appointed from a list of five or more  
25 names submitted by the minority leader of the senate; and

1 (d) two members appointed from a list of five or more  
2 names submitted by the leader of the house of  
3 representatives who is of the political party to which the  
4 speaker does not belong.

5 (3) Individuals considered for appointment to the  
6 interim board of directors pursuant to this section must  
7 have the same qualifications as candidates for the board of  
8 directors as provided in [section 5].

9 Section 10. Duties of the interim board --  
10 limitations. (1) The sole purpose of the interim board of  
11 the organization recognized by the commission under [section  
12 2] must be to carry out the initial operations of the  
13 corporation prior to the installation of the first regular  
14 board of directors. To effect this purpose, the interim  
15 board of directors shall:

16 (a) as soon as possible after appointment, organize  
17 for the transaction of business;

18 (b) inform the residential utility consumers in the  
19 state of the existence, nature, and purposes of the  
20 organization and encourage residential utility consumers to  
21 join the organization, to participate in the organization's  
22 activities, and to contribute to the organization;

23 (c) employ such temporary staff as the directors  
24 consider necessary to carry out its purposes pending  
25 selection of a regular board of directors;

1 (d) make all necessary preparations for the first  
2 election of a board of directors, oversee the conduct of the  
3 election, and tally votes;

4 (e) solicit funds for the corporation; and

5 (f) designate the length of terms for the first board  
6 of directors, as required under [section 11].

7 (2) The interim board may not intervene in any  
8 proceedings before the commission or any other body, or  
9 otherwise take any substantive action on behalf of the  
10 corporation except as necessary in responding to litigation  
11 initiated by another party in which the corporation is named  
12 as a party.

13 (3) No member of the interim board is eligible for  
14 election to the first regular board of directors elected  
15 pursuant to [section 11].

16 Section 11. Election of directors. (1) Not more than  
17 60 days after the membership of the organization reaches  
18 1,000 persons, with at least 50 members in each utility  
19 district, the interim board of directors shall set a date  
20 and place for the first general election of a board of  
21 directors and shall mail notice of such time and place to  
22 each member. The date for the election must not be more than  
23 180 days after such mailing.

24 (2) Each general election of the directors other than  
25 the first election of directors must be held, at a time and

1 place fixed by the board of directors, not less than 11  
2 months and not more than 13 months after the preceding  
3 general election. At least 4 months prior to the date fixed  
4 for such election, the board of directors shall mail notice  
5 of the date and place thereof to each member.

6 (3) Election of the board of directors must be  
7 conducted by secret ballot. The candidate receiving the  
8 greatest number of votes in each utility district must be  
9 declared an elected director; except that, in the case of  
10 the first election of a board of directors, the two  
11 candidates receiving the greatest number of votes in each  
12 utility district must be declared elected directors.

13 (4) Of the directors first elected to the board, three  
14 directors, each from a different district, shall serve a  
15 1-year term; three directors, each from a different  
16 district, shall serve a 2-year term; and four directors,  
17 each from a different district, shall serve a 3-year term.  
18 The interim board of directors shall designate by random  
19 method the length of term of office for each director  
20 position to be filled in the first election of directors and  
21 shall include the designation with the notice of the date  
22 and place of the first election of directors required under  
23 subsection (1).

24 Section 12. Annual membership meeting. An annual  
25 meeting of the membership of the organization must be held

1 on a date and at a place within the state to be determined  
 2 by the board of directors. All members must be eligible to  
 3 attend, participate in, and vote at the annual membership  
 4 meeting. The meeting must be open to the public.

5 Section 13. Mailing statement requirements. (1) The  
 6 citizens' utility organization may prepare and furnish to  
 7 any public utility providing utility service to residential  
 8 utility consumers in the state a statement or enclosure  
 9 printed in at least 9-point type on 11-point lead for  
 10 inclusion in such utility's periodic customer billing. The  
 11 statement or enclosure must be submitted to the utility not  
 12 less than 21 calendar days in advance of the utility's  
 13 periodic customer billing and not more than four times in a  
 14 calendar year.

15 (2) The statement or enclosure must explain or  
 16 describe the nature, purpose, activities, membership fee,  
 17 and provisions for membership of the organization. In  
 18 addition to any other information the organization may wish  
 19 to include, the statement or enclosure must explain that:

20 (a) the organization is open to membership by  
 21 residential utility consumers;

22 (b) the organization is not connected to any public  
 23 utility company or governmental agency;

24 (c) the organization is a nonprofit corporation  
 25 directed by its consumer members;

1 (d) the purpose of the organization is to advocate and  
 2 promote the rights of residential utility consumers;

3 (e) the organization is a statewide organization  
 4 engaged in matters concerning natural gas, electricity, and  
 5 telephone utilities and that the inserts in the utility's  
 6 customer billing statement are from the organization.

7 (3) The statement and enclosure must:

8 (a) be compatible in size with the public utility's  
 9 mailing envelope;

10 (b) have the character of a circular and may not have  
 11 the character of a bill, statement of account, or personal  
 12 correspondence; and

13 (c) conform to the specifications of the utility's  
 14 reasonable billing enclosure requirements and procedures.

15 Section 14. Obligation of public utility. (1) After  
 16 receipt of any statement or enclosure meeting the  
 17 requirements specified in [section 13], a public utility  
 18 shall prepare its next customer billing in such a manner as  
 19 to permit inclusion of such statement or enclosure and may  
 20 not use a postcard or other method for its periodic customer  
 21 billing that would preclude inclusion of the statement or  
 22 enclosure.

23 (2) At the request of the organization, the public  
 24 utility shall prominently state on the outside of a billing  
 25 envelope: "Note: This envelope contains important consumer



1 information not provided by [name of the utility]."

2 Section 15. Mailings -- reimbursement to utility.

3 (1) The organization is entitled to include, in a utility's  
4 periodic customer billing, statements and enclosures  
5 weighing up to one-half ounce avoirdupois without charge to  
6 the organization.

7 (2) The organization shall reimburse the utility for  
8 postage costs in an amount equal to the proportion of the  
9 total postage and delivery costs as the weight exceeding  
10 one-half ounce avoirdupois is to the total weight of the  
11 mailing if:

12 (a) the weight per envelope of the utility's periodic  
13 customer billing, when combined with the organization's  
14 statements and enclosures, exceeds one ounce avoirdupois;  
15 and

16 (b) the weight of the organization's statements and  
17 enclosures exceeds one-half ounce avoirdupois per billing  
18 envelope.

19 (3) In addition to any reimbursement for postage costs  
20 required under this section, the organization shall promptly  
21 reimburse the public utility for all other reasonable costs  
22 incurred by the utility, above the utility's normal postage  
23 and delivery costs. Such reimbursement must include interest  
24 computed at the current cost of borrowing capital by the  
25 public utility.

1 (4) The organization may postpone reimbursement to the  
2 utility for 3 months after the date of the first election of  
3 the board provided for in [section 11]. Such postponement  
4 may extend to all costs incurred through the date of such  
5 election.

6 (5) If within 3 months following the date an amount is  
7 due from the citizens' utility organization under this  
8 section the public utility is unable to collect the amount  
9 due, the utility may refuse further requests to mail a  
10 statement or enclosure until such time as the amount is  
11 paid, unless an action to resolve the dispute with respect  
12 to such costs is pending in a court of law.

13 Section 16. Reconciliation of disputes. (1) A dispute  
14 arising from actions under [sections 13 through 15] must be  
15 resolved by negotiations between the citizens' utility  
16 organization and the public utility, if possible, or by a  
17 civil action commenced in an appropriate court of law. The  
18 public utility and the organization may not fail to comply  
19 with this section by reason of the existence of such a  
20 dispute.

21 (2) Subsequent to the mailing of the enclosure or  
22 other material provided by the organization, a public  
23 utility company may request the commission to review that  
24 material. If the commission determines that the material  
25 provided by the organization contains an untrue statement of

1 material fact, it may order the organization to mail a  
2 clarification or retraction, or the commission may correct  
3 the statement itself. In no event, however, may a public  
4 utility refuse to mail, or delay the mailing of, any  
5 enclosure or other material provided by the organization.

6 Section 17. Prohibited acts. (1) No person may  
7 interfere with, threaten to interfere with, or cause any  
8 interference with the utility service of or threaten to  
9 penalize or cause to be penalized any person who contributes  
10 to the citizens' utility organization or who participates in  
11 any of its activities in retribution for such contribution  
12 or participation.

13 (2) No person may act with intent to prevent,  
14 interfere with, or hinder the activities permitted under  
15 [sections 13 through 16].

16 (3) No person may use any list of contributors to the  
17 organization, or any part of such list, for purposes other  
18 than the conduct of the business of the organization.

19 Section 18. Organization to be nonpartisan. The  
20 citizens' utility organization may not sponsor, endorse or  
21 otherwise support, or oppose any political party or the  
22 candidacy of any person for partisan public office.

23 Section 19. Restrictions on activities of board of  
24 directors. No member of the board of directors may run for  
25 public office while serving as a director of the citizens'

1 utility organization, and any member of the board shall  
2 immediately resign as a director upon announcement of his  
3 candidacy for public office.

4 Section 20. Miscellaneous provisions. Nothing in [this  
5 act] may be construed to:

6 (1) limit the right of an individual or group of  
7 individuals to initiate, intervene in, or otherwise  
8 participate in any proceeding before the commission or any  
9 other public body;

10 (2) require any petition or notification to the  
11 organization as a condition precedent to such right; or

12 (3) relieve any public utility or public body of any  
13 obligation or affect its discretion to permit intervention  
14 or participation by a consumer or group of consumers in any  
15 proceeding or activity or limit the right of any individual  
16 to obtain administrative or judicial review.

17 Section 21. Corrupt practices and conflicts of  
18 interest. (1) No person may offer or give anything of  
19 monetary value to any director, employee, or agent of the  
20 organization if the offer or gift influences or is intended  
21 to influence the action or judgment of the director,  
22 employee, or agent in his capacity as director, employee, or  
23 agent.

24 (2) No director, employee, or agent of the  
25 organization may solicit or accept anything of monetary

1 value from any person if the solicitation or acceptance  
 2 influences or is intended to influence the official action  
 3 or judgment of the director, employee, or agent in his  
 4 capacity as director, employee, or agent.

5 (3) No member of the board of directors, employee, or  
 6 agent of the organization may:

7 (a) offer or give anything of monetary value to or  
 8 render any service or perform any business for any public  
 9 utility company, employee, or agent of a public utility  
 10 company; or

11 (b) offer, give, solicit, or accept anything of  
 12 monetary value to or from any government official of this  
 13 state for the purpose of influencing that official's conduct  
 14 in office.

15 (4) The board shall remove from office any director,  
 16 employee, or agent violating the provisions of this section.

17 Section 22. Adoption of rules. The commission shall  
 18 adopt rules consistent with the provisions of [this act] to  
 19 allow and regulate the activities of the organization that  
 20 are within the scope of [this act].

21 Section 23. Construction. [This act], being necessary  
 22 for the welfare of the state and its inhabitants, is to be  
 23 liberally construed to effect its purposes.

24 Section 24. Codification instruction. Sections 1  
 25 through 23 are intended to be codified as an integral part

1 of Title 69, chapter 2, and the provisions of Title 69,  
 2 chapter 2, apply to sections 1 through 23.

3 Section 25. Severability. If a part of this act is  
 4 invalid, all valid parts that are severable from the invalid  
 5 part remain in effect. If a part of this act is invalid in  
 6 one or more of its applications, the part remains in effect  
 7 in all valid applications that are severable from the  
 8 invalid applications.

-End-

APPROVED BY COMM. ON NATURAL RESOURCES

1 *Senate* BILL NO. *444*  
2 INTRODUCED BY *Halleman, Cohen, Moran*  
3 *Call, Richard, Spinning, Yllert*

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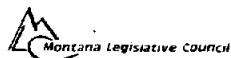
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22 distributing, or furnishing electrical energy or telephone  
23 service.

24 (13) "Residential utility consumer" means any person in  
25 the state whose residence is furnished utility service by a



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2 (14) "Utility district" means those districts  
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24 (d) initiate, intervene in, or otherwise participate  
25 as necessary on behalf of residential utility consumers in

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2 consumers;

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4 and campaign expenditures allowed for a candidate in an  
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6 (f) adopt bylaws, not inconsistent with any rules of  
7 the commission or with any provision of [this act], for the  
8 administration and regulation of the affairs of the  
9 corporation.

10 (2) In addition, the citizens' utility organization  
11 may:

12 (a) solicit and accept gifts, loans, grants, or other  
13 aid in order to support activities concerning the interests  
14 of residential utility consumers, except that it may not  
15 accept gifts, loans, or other aid from any public utility or  
16 from any person directly employed by a public utility;

17 (b) conduct, support, and assist research surveys,  
18 investigations, and other activities concerning the  
19 interests of residential utility consumers;

20 (c) support or oppose ballot propositions concerning  
21 matters that affect the interests of residential utility  
22 consumers;

23 (d) represent the interests of residential utility  
24 consumers before legislative bodies, administrative  
25 agencies, state and federal courts, the commission, and

1 other public bodies; and

2 (e) exercise all other rights and powers that are  
3 reasonably necessary for the effective representation and  
4 protection of the interests of residential utility  
5 consumers.

6 Section 5. Board of directors. (1) The term of office  
7 for members of the board of directors is 3 years, and no  
8 member of the board may serve more than two consecutive full  
9 terms.

10 (2) No present employee, director, shareholder,  
11 bondholder, consultant, attorney, or accountant of any  
12 public utility or spouse of any such person and no employee  
13 of the public service commission is eligible to serve as a  
14 director. No candidate for election to the board of  
15 directors may hold an elective public office or be a  
16 candidate for an elective public office.

17 (3) A candidate for the board of directors must:

18 (a) be a resident of the district that he seeks to  
19 represent;

20 (b) be a member of the organization;

21 (c) submit a statement of personal background and  
22 positions on issues relating to regulated public utilities  
23 and a statement of financial interest, as required under  
24 [sections 7 and 8]; and

25 (d) meet such additional nomination and election

1 qualifications as may be established by the organization.

2 Section 6. Duties of directors. In addition to those  
3 duties assigned to the board of directors under the articles  
4 of incorporation or bylaws of the organization, the board of  
5 directors shall:

6 (1) make all reports, studies, and other information  
7 compiled by the organization and all data pertaining to the  
8 finances of the corporation available for public inspection  
9 during regular business hours;

10 (2) maintain for inspection by the membership  
11 quarterly statements of the financial and substantive  
12 operations of the organization;

13 (3) cause the organization's books to be audited by a  
14 certified public accountant at least once each fiscal year  
15 and make the audit available to the general public;

16 (4) make available for public inspection, as soon as  
17 practicable after the close of the fiscal year, an annual  
18 report of the organization's financial and substantive  
19 operations;

20 (5) report to the membership at an annual membership  
21 meeting the past and projected activities and policies of  
22 the organization;

23 (6) make available to each member upon request all  
24 papers, records, documents, and other materials in the  
25 possession of the organization, subject to guidelines

1 established by the board to protect personal privacy.

2 Section 7. Statement of personal background and  
3 positions. A candidate for election to the board of  
4 directors shall submit to the board of directors, not later  
5 than 60 days prior to the election, on a form to be provided  
6 by the board of directors, a statement concerning his  
7 personal background and positions on issues relating to  
8 regulated public utilities or the operations of the  
9 citizens' utility organization. The statement must contain  
10 an affirmation, subject to penalty of false swearing, that  
11 the information contained in the statement of personal  
12 background is true and complete and that the candidate meets  
13 the qualifications prescribed for directors.

14 Section 8. Statement of financial interests. A  
15 candidate for election to the board of directors whose  
16 nomination is certified shall submit to the board of  
17 directors, not later than 60 days prior to the election,  
18 upon a form to be provided by the board of directors, a  
19 statement of financial interests. The statement of financial  
20 interests, which must be open for public inspection, must  
21 include the following information:

22 (1) the occupation, employer, and position at place of  
23 employment of the candidate and of his immediate family  
24 members;

25 (2) a list of all financial interests, corporate and

1 organizational directorships or other offices, and fiduciary  
2 relationships held in the past 3 years by the candidate and  
3 by his immediate family members;

4 (3) the name of any creditor to whom the candidate or  
5 a member of the candidate's immediate family owes \$3,000 or  
6 more, and the amount owed;

7 (4) the name of any corporation in which the candidate  
8 holds a security, the current market value of which is  
9 \$3,000 or more, and the dollar value of such security;

10 (5) an affirmation, subject to penalty of false  
11 swearing, that the information contained in the statement of  
12 financial interests is true and complete.

13 Section 9. Appointment of interim board of directors.  
14 (1) The governor shall appoint an interim board of  
15 directors for any qualified organization wishing to submit  
16 an application to the commission for the purpose of gaining  
17 recognition as the citizens' utility organization.

18 (2) The interim board of directors shall consist of:

19 (a) three members appointed from a list of five or  
20 more names submitted by the president of the senate;

21 (b) three members appointed from a list of five or  
22 more names submitted by the speaker of the house of  
23 representatives;

24 (c) two members appointed from a list of five or more  
25 names submitted by the minority leader of the senate; and

1 (d) two members appointed from a list of five or more  
2 names submitted by the leader of the house of  
3 representatives who is of the political party to which the  
4 speaker does not belong.

5 (3) Individuals considered for appointment to the  
6 interim board of directors pursuant to this section must  
7 have the same qualifications as candidates for the board of  
8 directors as provided in [section 5].

9 Section 10. Duties of the interim board --  
10 limitations. (1) The sole purpose of the interim board of  
11 the organization recognized by the commission under [section  
12 2] must be to carry out the initial operations of the  
13 corporation prior to the installation of the first regular  
14 board of directors. To effect this purpose, the interim  
15 board of directors shall:

16 (a) as soon as possible after appointment, organize  
17 for the transaction of business;

18 (b) inform the residential utility consumers in the  
19 state of the existence, nature, and purposes of the  
20 organization and encourage residential utility consumers to  
21 join the organization, to participate in the organization's  
22 activities, and to contribute to the organization;

23 (c) employ such temporary staff as the directors  
24 consider necessary to carry out its purposes pending  
25 selection of a regular board of directors;



1 (d) make all necessary preparations for the first  
2 election of a board of directors, oversee the conduct of the  
3 election, and tally votes;

4 (e) solicit funds for the corporation; and

5 (f) designate the length of terms for the first board  
6 of directors, as required under [section 11].

7 (2) The interim board may not intervene in any  
8 proceedings before the commission or any other body, or  
9 otherwise take any substantive action on behalf of the  
10 corporation except as necessary in responding to litigation  
11 initiated by another party in which the corporation is named  
12 as a party.

13 (3) No member of the interim board is eligible for  
14 election to the first regular board of directors elected  
15 pursuant to [section 11].

16 Section 11. Election of directors. (1) Not more than  
17 60 days after the membership of the organization reaches  
18 1,000 persons, with at least 50 members in each utility  
19 district, the interim board of directors shall set a date  
20 and place for the first general election of a board of  
21 directors and shall mail notice of such time and place to  
22 each member. The date for the election must not be more than  
23 180 days after such mailing.

24 (2) Each general election of the directors other than  
25 the first election of directors must be held, at a time and

1 place fixed by the board of directors, not less than 11  
2 months and not more than 13 months after the preceding  
3 general election. At least 4 months prior to the date fixed  
4 for such election, the board of directors shall mail notice  
5 of the date and place thereof to each member.

6 (3) Election of the board of directors must be  
7 conducted by secret ballot. The candidate receiving the  
8 greatest number of votes in each utility district must be  
9 declared an elected director; except that, in the case of  
10 the first election of a board of directors, the two  
11 candidates receiving the greatest number of votes in each  
12 utility district must be declared elected directors.

13 (4) Of the directors first elected to the board, three  
14 directors, each from a different district, shall serve a  
15 1-year term; three directors, each from a different  
16 district, shall serve a 2-year term; and four directors,  
17 each from a different district, shall serve a 3-year term.  
18 The interim board of directors shall designate by random  
19 method the length of term of office for each director  
20 position to be filled in the first election of directors and  
21 shall include the designation with the notice of the date  
22 and place of the first election of directors required under  
23 subsection (1).

24 Section 12. Annual membership meeting. An annual  
25 meeting of the membership of the organization must be held

1 on a date and at a place within the state to be determined  
2 by the board of directors. All members must be eligible to  
3 attend, participate in, and vote at the annual membership  
4 meeting. The meeting must be open to the public.

5 Section 13. Mailing statement requirements. (1) The  
6 citizens' utility organization may prepare and furnish to  
7 any public utility providing utility service to residential  
8 utility consumers in the state a statement or enclosure  
9 printed in at least 9-point type on 11-point lead for  
10 inclusion in such utility's periodic customer billing. The  
11 statement or enclosure must be submitted to the utility not  
12 less than 21 calendar days in advance of the utility's  
13 periodic customer billing and not more than four times in a  
14 calendar year.

15 (2) The statement or enclosure must explain or  
16 describe the nature, purpose, activities, membership fee,  
17 and provisions for membership of the organization. In  
18 addition to any other information the organization may wish  
19 to include, the statement or enclosure must explain that:

20 (a) the organization is open to membership by  
21 residential utility consumers;

22 (b) the organization is not connected to any public  
23 utility company or governmental agency;

24 (c) the organization is a nonprofit corporation  
25 directed by its consumer members;

1 (d) the purpose of the organization is to advocate and  
2 promote the rights of residential utility consumers;

3 (e) the organization is a statewide organization  
4 engaged in matters concerning natural gas, electricity, and  
5 telephone utilities and that the inserts in the utility's  
6 customer billing statement are from the organization.

7 (3) The statement and enclosure must:

8 (a) be compatible in size with the public utility's  
9 mailing envelope;

10 (b) have the character of a circular and may not have  
11 the character of a bill, statement of account, or personal  
12 correspondence; and

13 (c) conform to the specifications of the utility's  
14 reasonable billing enclosure requirements and procedures.

15 Section 14. Obligation of public utility. (1) After  
16 receipt of any statement or enclosure meeting the  
17 requirements specified in [section 13], a public utility  
18 shall prepare its next customer billing in such a manner as  
19 to permit inclusion of such statement or enclosure and may  
20 not use a postcard or other method for its periodic customer  
21 billing that would preclude inclusion of the statement or  
22 enclosure.

23 (2) At the request of the organization, the public  
24 utility shall prominently state on the outside of a billing  
25 envelope: "Note: This envelope contains important consumer

1 information not provided by [name of the utility]."

2 Section 15. Mailings -- reimbursement to utility.

3 (1) The organization is entitled to include, in a utility's  
4 periodic customer billing, statements and enclosures  
5 weighing up to one-half ounce avoirdupois without charge to  
6 the organization.

7 (2) The organization shall reimburse the utility for  
8 postage costs in an amount equal to the proportion of the  
9 total postage and delivery costs as the weight exceeding  
10 one-half ounce avoirdupois is to the total weight of the  
11 mailing if:

12 (a) the weight per envelope of the utility's periodic  
13 customer billing, when combined with the organization's  
14 statements and enclosures, exceeds one ounce avoirdupois;  
15 and

16 (b) the weight of the organization's statements and  
17 enclosures exceeds one-half ounce avoirdupois per billing  
18 envelope.

19 (3) In addition to any reimbursement for postage costs  
20 required under this section, the organization shall promptly  
21 reimburse the public utility for all other reasonable costs  
22 incurred by the utility, above the utility's normal postage  
23 and delivery costs. Such reimbursement must include interest  
24 computed at the current cost of borrowing capital by the  
25 public utility.

1 (4) The organization may postpone reimbursement to the  
2 utility for 3 months after the date of the first election of  
3 the board provided for in [section 11]. Such postponement  
4 may extend to all costs incurred through the date of such  
5 election.

6 (5) If within 3 months following the date an amount is  
7 due from the citizens' utility organization under this  
8 section the public utility is unable to collect the amount  
9 due, the utility may refuse further requests to mail a  
10 statement or enclosure until such time as the amount is  
11 paid, unless an action to resolve the dispute with respect  
12 to such costs is pending in a court of law.

13 Section 16. Reconciliation of disputes. (1) A dispute  
14 arising from actions under [sections 13 through 15] must be  
15 resolved by negotiations between the citizens' utility  
16 organization and the public utility, if possible, or by a  
17 civil action commenced in an appropriate court of law. The  
18 public utility and the organization may not fail to comply  
19 with this section by reason of the existence of such a  
20 dispute.

21 (2) Subsequent to the mailing of the enclosure or  
22 other material provided by the organization, a public  
23 utility company may request the commission to review that  
24 material. If the commission determines that the material  
25 provided by the organization contains an untrue statement of

1 material fact, it may order the organization to mail a  
 2 clarification or retraction, or the commission may correct  
 3 the statement itself. In no event, however, may a public  
 4 utility refuse to mail, or delay the mailing of, any  
 5 enclosure or other material provided by the organization.

6 Section 17. Prohibited acts. (1) No person may  
 7 interfere with, threaten to interfere with, or cause any  
 8 interference with the utility service of or threaten to  
 9 penalize or cause to be penalized any person who contributes  
 10 to the citizens' utility organization or who participates in  
 11 any of its activities in retribution for such contribution  
 12 or participation.

13 (2) No person may act with intent to prevent,  
 14 interfere with, or hinder the activities permitted under  
 15 [sections 13 through 16].

16 (3) No person may use any list of contributors to the  
 17 organization, or any part of such list, for purposes other  
 18 than the conduct of the business of the organization.

19 Section 18. Organization to be nonpartisan. The  
 20 citizens' utility organization may not sponsor, endorse or  
 21 otherwise support, or oppose any political party or the  
 22 candidacy of any person for partisan public office.

23 Section 19. Restrictions on activities of board of  
 24 directors. No member of the board of directors may run for  
 25 public office while serving as a director of the citizens'

1 utility organization, and any member of the board shall  
 2 immediately resign as a director upon announcement of his  
 3 candidacy for public office.

4 Section 20. Miscellaneous provisions. Nothing in [this  
 5 act] may be construed to:

6 (1) limit the right of an individual or group of  
 7 individuals to initiate, intervene in, or otherwise  
 8 participate in any proceeding before the commission or any  
 9 other public body;

10 (2) require any petition or notification to the  
 11 organization as a condition precedent to such right; or

12 (3) relieve any public utility or public body of any  
 13 obligation or affect its discretion to permit intervention  
 14 or participation by a consumer or group of consumers in any  
 15 proceeding or activity or limit the right of any individual  
 16 to obtain administrative or judicial review.

17 Section 21. Corrupt practices and conflicts of  
 18 interest. (1) No person may offer or give anything of  
 19 monetary value to any director, employee, or agent of the  
 20 organization if the offer or gift influences or is intended  
 21 to influence the action or judgment of the director,  
 22 employee, or agent in his capacity as director, employee, or  
 23 agent.

24 (2) No director, employee, or agent of the  
 25 organization may solicit or accept anything of monetary

1 value from any person if the solicitation or acceptance  
2 influences or is intended to influence the official action  
3 or judgment of the director, employee, or agent in his  
4 capacity as director, employee, or agent.

5 (3) No member of the board of directors, employee, or  
6 agent of the organization may:

7 (a) offer or give anything of monetary value to or  
8 render any service or perform any business for any public  
9 utility company, employee, or agent of a public utility  
10 company; or

11 (b) offer, give, solicit, or accept anything of  
12 monetary value to or from any government official of this  
13 state for the purpose of influencing that official's conduct  
14 in office.

15 (4) The board shall remove from office any director,  
16 employee, or agent violating the provisions of this section.

17 Section 22. Adoption of rules. The commission shall  
18 adopt rules consistent with the provisions of [this act] to  
19 allow and regulate the activities of the organization that  
20 are within the scope of [this act].

21 Section 23. Construction. [This act], being necessary  
22 for the welfare of the state and its inhabitants, is to be  
23 liberally construed to effect its purposes.

24 Section 24. Codification instruction. Sections 1  
25 through 23 are intended to be codified as an integral part

1 of Title 69, chapter 2, and the provisions of Title 69,  
2 chapter 2, apply to sections 1 through 23.

3 Section 25. Severability. If a part of this act is  
4 invalid, all valid parts that are severable from the invalid  
5 part remain in effect. If a part of this act is invalid in  
6 one or more of its applications, the part remains in effect  
7 in all valid applications that are severable from the  
8 invalid applications.

-End-

APPROVED BY COMM. ON  
NATURAL RESOURCES

STATEMENT OF INTENT

SENATE BILL 444

Senate Natural Resources Committee

A statement of intent is required for this bill because it directs the public service commission to adopt rules to:

(1) recognize a citizens' utility organization for the purpose of allowing the organization to represent and advocate the interests of residential utility consumers in proceedings before the commission;

(2) permit the citizens' utility organization access to utility customer billing envelopes; and

(3) regulate the activities of the citizens' utility organization with respect to its activities within the scope of this bill.

In devising its rules, the commission must provide the same requirements for the structure and membership of the organization as those set forth in sections 3 and 5.

In addition, the commission should review the articles of incorporation and the bylaws of the organization requesting recognition to ensure that the organization and its board have been given authority and responsibilities consistent with sections 4 through 8. Furthermore, the commission should ensure that the organization meets the requirements established for an interim board of directors

as provided for in sections 9 and 10.

Before implementing the provisions of this bill, the commission may adopt additional rules to clarify the operation of sections 13 through 15 as regards access to utility billing envelopes. Furthermore, the commission may adopt other rules to regulate the activities of the organization; however, the commission must be guided by the following expressed findings of the legislature.

The legislature finds that adequate and affordable utility service to all residential utility consumers is in the public interest and that such service is necessary for the general welfare of the citizens of the state.

Moreover, the legislature declares it the policy of the state to foster and encourage active citizen participation in utility matters and to facilitate effective representation and advocacy of the interests of residential utility consumers before regulatory agencies, the legislature, the courts, and other public bodies in order to ensure that public policies affecting the quality, cost, and delivery of utility service fairly reflect the needs and concerns of the residential utility consumer.

Therefore, the legislature finds that proper representation of residential utility consumers can best be secured by recognition of one permanent nonprofit organization which is under the democratic control of its

1 membership and held solely responsible to the goals of its  
2 membership.

3 In order to ensure an adequate funding mechanism that  
4 will provide inclusion of the widest possible segment of the  
5 consuming public, the legislature considers it fitting and  
6 proper to allow access to utility billing envelopes by the  
7 organization recognized by the commission.

8 It is contemplated that, subject to the limitations  
9 placed on such access to billing envelopes, the organization  
10 may seek public membership in the organization and inform  
11 the public about utility matters affecting them. No rule  
12 adopted by the commission should so limit the organization  
13 as to burden the organization or defeat the spirit and  
14 purpose of this legislation.