

1 S.206

2 Introduced by Senator Hartwell

3 Referred to Committee on

4 Date:

5 Subject: Utilities; Public Service Board proceedings; intervenor funding;

6 ratepayer advocacy; Public Service Oversight Committee;

7 Commissioner of Public Service removal

8 Statement of purpose of bill as introduced: This bill proposes to establish
9 funding for parties granted intervenor status in proceedings before the Public
10 Service Board; create an Office of the Ratepayer Advocate overseen by a joint
11 legislative Public Service Oversight Committee; and require that the
12 Commissioner of Public Service may be removed from office only for cause.

13 An act relating to enhanced public advocacy in Public Service Board
14 proceedings

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 * * * Intervenor Funding * * *

17 Sec. 1. 30 V.S.A. § 35 is added to read:

18 § 35. INTERVENOR FUNDING

19 (a) The Board may compensate a party who has been permitted to intervene
20 in a proceeding for some or all of the reasonable costs of its participation in
21 that proceeding, pursuant to section 21 of this title.

1 (b) Before awarding compensation under this section, the Board shall find
2 that the intervening party's participation:

3 (1) is necessary to provide an adequate presentation of a significant
4 position on issues affecting the public interest and that adequate presentation of
5 that position would not be possible without a reasonable expectation of an
6 award of compensation;

7 (2) will provide a significant contribution to the resolution of issues
8 significant to the public interest; and

9 (3) would impose a significant financial hardship on the intervening
10 party absent compensation under this section.

11 (c) Within 30 days after a prehearing conference is held or at any other
12 time established by the Board, a party seeking compensation under this section
13 shall state the party's intention to seek compensation and shall describe how
14 the party's participation will meet the requirements of subsection (b) of this
15 section.

16 (d) The Board may require, in the interest of judicial economy, that parties
17 participating under this section consolidate their representation on issues.

18 (e) In the case of a group or organization granted intervenor party status
19 and seeking compensation under this section, "significant financial hardship"
20 shall mean that the economic interests of the individual members of the group

1 or organization are small in comparison to the costs of effective participation
2 in the proceeding.

3 (f) A company as defined in section 201 or subdivision 501(3) of this title
4 shall not be eligible for compensation under this section.

5 (g) The Board shall adopt rules implementing this section, including
6 procedures by which a party may seek a preliminary ruling as to the likelihood
7 that the criteria of this section will be met and compensation awarded.

8 * * * Office of the Ratepayer Advocate * * *

9 Sec. 2. 30 V.S.A. part 1, chapter 4 is added to read:

10 CHAPTER 4. RATEPAYER ADVOCATE

11 § 151. FINDINGS; INTENT

12 (a) Many Vermonters believe there is a need for additional independent
13 advocacy within proceedings before the Public Service Board on behalf of
14 ratepayers, many of whom do not have the financial resources or expertise to
15 participate fully in and advance their interests in its proceedings.

16 (b) It is the intent of the General Assembly to create an independent office
17 to advocate for the lowest reasonable rates for Vermont ratepayers, consistent
18 with an equitable distribution of rates among all classes of ratepayers and the
19 maintenance of adequate service provided by Vermont companies subject to
20 the jurisdiction of the Public Service Board.

1 § 152. DEFINITIONS

2 As used in this chapter:

3 (1) “Advocate” means the Ratepayer Advocate established under section
4 153 of this chapter.

5 (2) “Board” means the Public Service Board established under section 3
6 of this title.

7 (3) “Committee” means the Committee on Public Service Oversight
8 established under 2 V.S.A. chapter 29.

9 (4) “Department” means the Department of Public Service established
10 under 3 V.S.A. § 212 and section 1 of this title.

11 (5) “Office” means the Office of the Ratepayer Advocate established by
12 section 153 of this chapter.

13 (6) “Ratepayer” means a person who purchases or contracts for the
14 purchase of a retail service provided by a public service company subject to
15 regulation by the Public Service Board under section 203 of this title or who
16 purchases or contracts for the purchase of propane from a retail distributor of
17 propane.

18 § 153. OFFICE; RATEPAYER ADVOCATE; APPOINTMENT

19 (a) There is created an independent Office of the Ratepayer Advocate to
20 consist of a Ratepayer Advocate and such other persons as the Advocate deems

1 necessary to conduct the business of the Office, pursuant to the terms of this
2 chapter.

3 (b) The Committee shall appoint a Ratepayer Advocate, an exempt
4 position, to represent the interests of ratepayers before the Public Service
5 Board.

6 § 154. QUALIFICATIONS; TERM

7 (a) The Advocate shall be an attorney admitted to practice before the
8 Vermont Supreme Court and shall perform his or her duties independently.

9 (b) The Advocate shall satisfy the qualifications established under section 4
10 (qualifications of the members and Clerk of the Public Service Board and
11 Commissioner of Public Service) of this title.

12 (c) The Advocate or any full-time employee of the Office shall not actively
13 engage in any other business or profession; serve as the representative of any
14 political party or on any executive committee or other governing body thereof;
15 serve as an executive, officer, or employee of any political party, committee,
16 organization, or association; receive remuneration for activities on behalf of
17 any candidate for public office; or engage on behalf of any candidate for public
18 office in the solicitation of votes or other activities on behalf of such
19 candidacy. The Advocate or any employee of the Office shall not become a
20 candidate for election to public office unless he or she first resigns from his or
21 her office or employment.

1 (d) The term of the Advocate shall be six years. Any appointment to fill a
2 vacancy shall be for the unexpired portion of the term vacated. An Advocate
3 wishing to succeed himself or herself in office may seek reappointment under
4 the terms of this section. The Advocate may be removed from office only by a
5 three-quarters' majority vote of the Committee.

6 § 155. DUTIES AND POWERS

7 It shall be the duty of the Advocate to provide legal representation for
8 Vermont ratepayers in proceedings before the Board, and to assist ratepayers
9 with resolving disputes with public service companies. The Advocate shall
10 have the powers necessary to carry out the duties of his or her office, including
11 the following specific powers:

12 (1) to recommend to the Board by petition the commencement of any
13 proceeding or action or to appear, in the name of ratepayers, in any proceeding
14 or action before the Board and urge any position which he or she deems to be
15 in the interest of ratepayers, and use all forms of discovery available to
16 attorneys in civil actions generally;

17 (2) to have access to and use of all files, records, and data of the Board
18 and the Department available to any other attorney representing a party in a
19 proceeding before the Board;

1 (3) in any proceeding in which he or she has participated as a party, to
2 seek review of any determination, finding, or order of the Board, or of any
3 hearing examiner designated by the Board, in the name of ratepayers;

4 (4) to prepare and issue reports, recommendations, and proposed orders
5 to the Board, the Governor, and the General Assembly on any matter or subject
6 within the jurisdiction of the Board, and to make recommendations as he or she
7 deems appropriate for legislation relative to Board or Department procedures,
8 rules, jurisdiction, personnel, and functions;

9 (5) to appear in the name of Vermont ratepayers before other State
10 agencies, federal agencies, and State and federal courts in connection with
11 matters under the jurisdiction of the Board or otherwise involving Vermont
12 utilities and which may affect the interests of Vermont ratepayers;

13 (6) subject to Committee approval, to establish eligibility criteria and
14 resource allocation for persons seeking legal representation by the Advocate;

15 (7) to establish a mechanism for receiving, tracking, and if possible,
16 resolving ratepayer complaints and disputes with public service companies and
17 retail distributors of propane;

18 (8) to receive funds appropriated to the Office by the General Assembly
19 or allocated to it by the Board under section 158 of this chapter; and to receive
20 grants, gifts, loans, or contributions from any other source, with the approval
21 of the Committee;

1 (9) to submit an annual budget to the Public Service Oversight
2 Committee; and
3 (10) to retain, subject to the approval of the Public Oversight
4 Committee, personnel in addition to the regular personnel of the Office to
5 assist the Advocate in any proceeding listed under subsection 20(b) of this title
6 and to monitor compliance with any formal opinion or order of the Board.

7 § 156. EMPLOYEES

8 The Committee may authorize the Advocate to employ legal, technical, and
9 clerical assistants whose qualifications, duties, responsibilities, salaries, and
10 expenses the Committee shall prescribe.

11 § 157. RECEIPT OF PLEADINGS

12 The Board shall furnish the Advocate with copies of the initial pleadings in
13 all proceedings before the Board.

14 § 158. FINANCING OF THE OFFICE; ADDITIONAL PERSONNEL

15 (a) Based on a budget approved by the Public Service Oversight
16 Committee, the Board shall annually allocate a portion of the revenue
17 generated from the taxes imposed under section 22 (gross operating revenue
18 tax) of this title for the purpose of maintaining and financing the Office.

19 (b) Costs incurred to retain additional personnel under subdivision 155(10)
20 of this chapter shall be allocated to the applicant or public service company or

1 companies involved in a particular proceeding in a manner specified in rules
2 adopted by the Public Service Oversight Committee.

3 § 159. LEGISLATIVE CONTROL

4 (a) The Advocate is under the Legislative Branch of government. Neither
5 the Governor nor any Executive Branch entity shall have the authority to
6 withhold funds appropriated to the Office by the General Assembly or
7 allocated to it by the Board.

8 (b) Neither the Governor nor any Executive Branch entity shall have the
9 authority to determine the number, or fix the compensation, of the employees
10 of the Office or to exercise any manner of control over them.

11 * * * Public Service Oversight Committee * * *

12 Sec. 3. 2 V.S.A. chapter 29 is added to read:

13 CHAPTER 29. PUBLIC SERVICE OVERSIGHT COMMITTEE

14 § 981. PUBLIC SERVICE OVERSIGHT COMMITTEE

15 (a) A joint legislative Public Service Oversight Committee is created. The
16 Committee shall be appointed biennially and consist of eight members: four
17 members of the House appointed by the Speaker, not all from the same
18 political party, and four members of the Senate appointed by the Senate
19 Committee on Committees, not all from the same political party.

1 (b) The Committee shall elect a chair, vice chair, and clerk from among its
2 members. The Chair shall alternate biennially between the House and Senate
3 members. A quorum shall consist of six members.

4 (c) Committee action shall be taken only if there is a quorum and the
5 proposed action is approved by majority vote of those members physically
6 present and voting.

7 (d) The Committee may adopt rules of procedure to carry out its duties.

8 § 982. FUNCTIONS AND DUTIES; REPORT

9 (a) The Public Service Oversight Committee shall appoint the Ratepayer
10 Advocate described in 30 V.S.A. chapter 4. The Committee shall assess
11 candidates using the following criteria:

12 (1) commitment to the interests of Vermont ratepayers;

13 (2) knowledge of or expertise in regulatory matters within the
14 jurisdiction of the Public Service Board;

15 (3) possession of desirable personal characteristics, including integrity,
16 diligence, administrative and communication skills, and regard for the public
17 good; and

18 (4) impartiality and the ability to remain free from undue influence by a
19 personal, political, business, or professional relationship with any company or
20 matter subject to regulation by the Public Service Board.

1 (b) The Public Service Oversight Committee shall carry on a continuing
2 review of the functions and performance of the Office of the Ratepayer
3 Advocate, the Public Service Board, and the Department of Public Service.
4 The purpose of this review is to assess whether these entities are functioning in
5 a manner that best serves the interests of ratepayers, as well as the general
6 good of the State, as appropriate.

7 (c) In conducting its review and in order to fulfill its duties, the Committee
8 shall consult the following:

9 (1) the Ratepayer Advocate;

10 (2) the Public Service Board;

11 (3) the Commissioner of Public Service;

12 (4) ratepayers and advocacy groups regarding their satisfaction,
13 complaints, and recommendations;

14 (5) public service companies subject to regulation by the Public Service
15 Board; and

16 (6) any other person or entity as determined by the Committee.

17 (d) The Committee shall review and approve, as it deems appropriate, the
18 annual budget submitted by the Ratepayer Advocate pursuant to 30 V.S.A.
19 § 155(9)

20 (e) The Committee shall work with, assist, and advise other committees of
21 the General Assembly, members of the Executive Branch, and the public on

1 matters relating to State utility regulation. Annually, on or before
2 December 15, the Committee shall report its activities, together with
3 recommendations, if any, to the Governor and the House Committees on
4 Commerce and Economic Development and on Natural Resources and Energy
5 and the Senate Committees on Finance, on Natural Resources and Energy, and
6 on Economic Development, Housing and General Affairs.

7 § 983. MEETINGS AND STAFF SUPPORT

8 (a) The Committee may meet during a session of the General Assembly at
9 the call of the Chair or by a majority of the members of the Committee. The
10 Committee may meet twice during adjournment at the call of the Chair or by a
11 majority of the members of the Committee. Additional meetings during
12 adjournment are subject to the approval of the Speaker of the House and the
13 President Pro Tempore of the Senate.

14 (b) For attendance at meetings which are held when the General Assembly
15 is not in session, the members of the Committee shall be entitled to the same
16 per diem compensation and reimbursement for necessary expenses as those
17 provided to members of standing committees under section 406 of this title.

18 (c) The Legislative Council and the Joint Fiscal Office shall provide
19 professional and administrative support to the Committee. The Department of
20 Public Service and other agencies of the State shall provide information,
21 assistance, and support upon request of the Committee.

1 Sec. 4. 30 V.S.A. § 22 is amended to read:

2 § 22. TAX TO FINANCE DEPARTMENT OF PUBLIC SERVICE AND
3 PUBLIC SERVICE BOARD

4 (a) For the purpose of maintaining the Department of Public Service ~~and~~
5 the Public Service Board, and the Office of the Ratepayer Advocate
6 established under chapter 4 of this title, including expenses related to
7 maintaining an adequate engineering, legal, and administrative force in the
8 Department of Public Service and paying all the expenses incident thereof,
9 including rents, each person, partnership, association, or private or municipal
10 corporation conducting a business subject to the supervision of the Department
11 of Public Service and Public Service Board, including electric cooperatives,
12 shall pay into the State Treasury on or before April 15 annually, in addition to
13 the taxes now required by law to be paid, a tax, at the rate hereinafter named,
14 according to the nature of the public service business engaged in by such
15 person, partnership, association, or private or municipal corporation, based on
16 the gross operating revenue received by such person, partnership, association,
17 or private or municipal corporation in the conduct of such business in the State
18 during the year next preceding, as shown by the annual report filed on or
19 before such date with the Department of Public Service on the form prescribed
20 by it and containing such information as may be necessary to enable the

1 Department to determine the amount of the tax payable. The rate of tax for
2 each type of public service company shall be the following:

3 * * *

4 (c) Of the revenue deposited into the special fund for the maintenance of
5 engineering and accounting forces, after the allocation to the Office of the
6 Ratepayer Advocate of the amount necessary to support its approved budget
7 under 2 V.S.A. § 982(d), 40 percent shall be allocated to the Public Service
8 Board and 60 percent shall be allocated to the Department of Public Service.

9 (d)(1) On June 30 of each year any balance in the amount allocated to the
10 Public Service Board from the special fund for the maintenance of engineering
11 and accounting forces, after accounting for expenditures and encumbrances, in
12 excess of 20 percent of the Board's allocation for that year shall be used in the
13 manner provided by subdivision (3) of this subsection.

14 (2) On June 30 of each year any balance in the amount allocated to the
15 Department of Public Service from the special fund for the maintenance of
16 engineering and accounting forces, after accounting for expenditures and
17 encumbrances, in excess of 20 percent of the Department's allocation for that
18 year shall be used in the manner provided by subdivision (3) of this subsection.

19 (3) The excess balances determined under subdivisions (1) and (2) of
20 this subsection shall be used in the next succeeding year to directly reduce the

1 rates otherwise collected from the ratepayers of this State for the costs of the
2 telephone lifeline program authorized by subsection 218(c) of this title.

3 (4) Notwithstanding 3 V.S.A. § 23, as of June 30 of each year, any
4 balance in the amount allocated to the Office of the Ratepayer Advocate shall
5 be retained in the fund and may be used to support the approved budget of the
6 Office for the following fiscal year.

7 * * * Transfer of Positions * * *

8 Sec. 5. TRANSFER OF POSITIONS

9 On or before July 1, 2014, the Department of Public Service, Public
10 Advocacy Division shall transfer three exempt attorney positions and one
11 classified administrative support position, as well as appropriate amounts for
12 personal services and operating expenses, to the Office of the Ratepayer
13 Advocate. The Department of Public Service, Consumer Affairs and Public
14 Information Division shall transfer three consumer affairs specialist positions,
15 as well as appropriate amounts for personal services and operating expenses, to
16 the Office of the Ratepayer Advocate. The Department of Public Service,
17 Finance and Economics Division shall transfer one utility analyst position, as
18 well as appropriate amounts for personal services and operating expenses, to
19 the Office of the Ratepayer Advocate.

1 * * * Removal of Commissioner for Cause * * *

2 Sec. 6. 30 V.S.A. § 1 is amended to read:

3 § 1. COMPOSITION OF DEPARTMENT

4 (a) The ~~department of public service~~ Department of Public Service shall
5 consist of the ~~commissioner of public service~~ Commissioner of Public Service,
6 a ~~director for regulated utility planning~~ Director for Regulated Utility Planning,
7 a ~~director for public advocacy~~ Director for Public Advocacy, a ~~director for~~
8 ~~energy efficiency~~ Director for Energy Efficiency and such other persons as the
9 ~~commissioner~~ Commissioner considers necessary to conduct the business of
10 the ~~department~~ Department.

11 (b) The ~~commissioner of public service~~ Commissioner of Public Service
12 shall be appointed by the ~~governor~~ Governor with the advice and consent of
13 the ~~senate~~ Senate. The ~~commissioner of public service~~ Commissioner shall
14 serve for a term of two years beginning February 1 of the year in which the
15 appointment is made. ~~The commissioner shall serve at the pleasure of the~~
16 ~~governor~~ Notwithstanding 3 V.S.A. § 2004 or any other provision of law, the
17 Commissioner may be removed only for cause. The ~~directors for regulated~~
18 ~~utility planning~~ Directors for Regulated Utility Planning, for ~~energy efficiency~~
19 Energy Efficiency, and for ~~public advocacy~~ Public Advocacy shall be
20 appointed by the ~~commissioner~~ Commissioner.

