

Introduced: 3/5/76  
Referred: Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 853

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act creating a nonprofit Residential Utility Con-  
7 sumer Action Group Corporation; and changing Rule 24,  
8 Rules of Civil Procedure."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds and declares  
11 that

12 (1) utility bills are increasing at an unparalleled rate in all  
13 forms of utility service;

14 (2) a well-funded private nonprofit membership corporation com-  
15 posed of consumers is needed to represent the interests of consumers;

16 (3) it is the responsibility of the state to insure that a utility  
17 does not earn more than a fair rate of return and is operated efficiently;

18 (4) it is the responsibility of the state to assure that utility  
19 services are priced to the people of the state so that their basic human  
20 needs can be met without undue economic hardship;

21 (5) the rapid rate of growth in the demand for energy is due in  
22 part to wasteful, uneconomic, inefficient, and unnecessary exploitation of  
23 energy and that a continuation of such growth will result, and is currently  
24 resulting, in a serious threat to the health and well-being of the citizens  
25 of this state.

26 \* Sec. 2. AS 42 is amended by adding a new chapter to read:

27 CHAPTER 40. RESIDENTIAL UTILITY CONSUMER  
28 ACTION GROUP CORPORATION.

29 Sec. 42.40.100. RESIDENTIAL UTILITY CONSUMER ACTION GROUP

1 CORPORATION. There is created a nonprofit corporation known as the  
2 Residential Utility Consumer Action Group Corporation. Members consist  
3 of all residential utility consumers who contributed a minimum of \$1 to  
4 the organization during the corporation's preceding fiscal year; how-  
5 ever, for the first fiscal year of its life, the membership consists of  
6 all persons who have contributed to the organization during that fiscal  
7 year.

8 Sec. 42.40.110. DUTIES AND RESPONSIBILITIES. (a) The corporation  
9 has all general powers, duties and responsibilities of other private  
10 membership nonprofit corporations under AS 10.20 which are consistent  
11 with this chapter and all rights and powers reasonably necessary to  
12 effectively represent and protect the interests of consumers of utility  
13 services.

14 (b) The corporation is authorized to conduct, support, and assist  
15 research, studies, plans, investigations, conferences, demonstration  
16 projects, and surveys concerning the interests of residential utility  
17 consumers.

18 Sec. 42.40.120. HEARINGS AND OTHER PROCEEDINGS. (a) When the  
19 corporation determines that the result of a utility regulatory agency  
20 proceeding may substantially affect the interests of residential utility  
21 consumers, it may intervene as a party or otherwise participate in a  
22 hearing or other proceeding for the purpose of representing the inter-  
23 ests of residential utility consumers in the proceeding. The corpora-  
24 tion shall comply with laws governing a utility regulatory agency and  
25 procedures of general applicability governing

- 26 (1) intervention or participation in a proceeding; and  
27 (2) the conduct of the proceeding.

28 (b) In a utility proceeding in which the corporation is interven-  
29 ing or participating, the corporation may request the utility regulatory

1 agency to issue such orders as are appropriate under the agency's  
2 practices and procedures with respect to the summoning of witnesses,  
3 copying of documents, papers, and records, production of books and  
4 papers and submission of information in writing. The utility regulatory  
5 agency shall issue the orders unless it reasonably determines that an  
6 order requested is not relevant to the matter at issue, or would unduly  
7 interfere with the agency's discharge of its own statutory obligation.  
8 The intervention of the corporation in a proceeding does not affect the  
9 obligation of the agency conducting the proceeding to operate in the  
10 public interest.

11 Sec. 42.40.125. PREHEARING ACTIVITY. (a) In exercising its  
12 authority under this chapter the corporation may obtain data by re-  
13 quiring a utility whose actions it determines may substantially affect  
14 an interest of residential utility consumers, by general or specific  
15 order setting out with particularity the consumer interest involved and  
16 the purposes for which the information is being sought, to file with it  
17 a report or answers in writing to specific questions concerning the  
18 activities and other related information.

19 (b) The corporation shall not exercise its authority under (a) of  
20 this section if the information sought

- 21 (1) is available as a matter of public record; or  
22 (2) is for use in connection with its intervention in a  
23 regulatory proceeding against the utility to whom the interrogatory is  
24 addressed if the proceeding is pending at the time the interrogatory is  
25 requested and the regulatory agency has subpoena power.

26 Sec. 42.40.130. PETITION FOR REGULATION. (a) If the corporation  
27 determines that it would be in the interest of residential utility con-  
28 sumers to do so, it may file with the utility regulatory agency a peti-  
29 tion requesting it

1 (1) to commence and complete a proceeding respecting a utility  
2 action or inaction; or

3 (2) to complete the proceedings.

4 (b) The petition shall set out facts which it is claimed establish  
5 the need for the proceeding and a brief description of the substance of  
6 the order or amendment desired as a result of the hearing.

7 (c) The agency may hold a public hearing or conduct an investiga-  
8 tion or proceeding as it considers appropriate in order to determine  
9 whether or not the petition should be granted.

10 (d) Within 60 days after the filing of the petition described in  
11 (b) of this section, the agency shall grant or deny the petition. If  
12 the agency grants the petition, it shall promptly commence or complete  
13 the proceeding, as requested by the petition. If the agency denies the  
14 petition it shall publish the reasons for the denial.

15 (e) If the agency denies the petition made under this section, or  
16 if it fails to grant or deny the petition within 60 days, the petitioner  
17 may commence a civil action in a court to compel the agency to commence  
18 the proceeding as requested in the petition. An action may be filed by  
19 the petitioner 30 days after the denial of the petition, (or if the  
20 agency fails to grant or deny the petition, within 60 days) or at any  
21 time thereafter.

22 (f) If the petitioner can demonstrate to the satisfaction of the  
23 court, by a preponderance of the evidence in a de novo proceeding before  
24 the court, that the failure of the agency to commence or complete the  
25 proceeding as requested in the petition was unreasonable, the court  
26 shall order the agency to commence the proceeding as requested in the  
27 petition.

28 (g) In an action under this section, the court has no authority to  
29 compel the utility regulatory agency to take any action other than the

1 commencement of a proceeding. The remedies under this section are in  
2 addition to other remedies provided by law.

3 Sec. 42.40.135. STANDING. The corporation shall be considered to  
4 have an interest sufficient to maintain actions for judicial review and  
5 may, as of right, and in the manner prescribed by law, intervene or  
6 otherwise participate in civil proceedings involving review or enforce-  
7 ment of agency action which the corporation determines may substantially  
8 affect the interests of consumers.

9 Sec. 42.40.140. FUNDING. (a) There is within the corporation the  
10 residential utility consumer action group corporation account.

11 (b) Upon proper request by the corporation each utility shall  
12 include or enclose within, upon or attached to any periodic billing  
13 which the utility sends, mails, or delivers to a utility consumer

14 (1) a statement prepared and furnished to the utility by the  
15 corporation to be printed upon the face of the billing which shall be no  
16 smaller than eight-point type and a box to be printed upon the face of  
17 the billing which shall be no smaller than one-half inch high and one-  
18 half inch wide upon which the utility consumer may indicate that any  
19 payment in excess of the balance due on the billing shall be transferred  
20 to the corporation; and

21 (2) a statement or any materials prepared and furnished to  
22 the utility by the corporation concerning the organization, past,  
23 current and future activities of the corporation and any other matter  
24 which may affect the interests of utility consumers; the statement or  
25 materials shall not exceed the folded size of 3 1/4 x 7 1/2 inches and  
26 shall not exceed two ounces avoird.

27 (c) Each utility shall include or enclose within, upon or attached  
28 to a periodic billing any material prepared and furnished by the cor-  
29 poration upon the written request of the corporation. The request shall

1 conform to the following guidelines:

2 (1) the corporation shall notify the utilities of its inten-  
3 tion to include any material or statement within, upon or attached to  
4 any specified periodic billing up to one year in advance, but not less  
5 than 21 calendar days before the mailing of the periodic billing; and

6 (2) the corporation shall supply the utility with the mater-  
7 ial or statement to be included within, upon or attached to any speci-  
8 fied periodic billing up to one year in advance, but not less than 14  
9 calendar days before the mailing of the periodic billing.

10 (d) Each utility shall quarterly transfer to the corporation money  
11 accumulated for it under this section and shall also furnish to the  
12 corporation the names and the amount of the contribution of those con-  
13 sumers who have made contributions to the residential utility consumer  
14 action group corporation account.

15 (e) The corporation shall pay all reasonable costs incurred by a  
16 utility in complying with this section. Notwithstanding a dispute as to  
17 the proper costs, the utility shall continue to comply with this sec-  
18 tion.

19 (f) No utility, or officer or employee of a utility, may interfere  
20 with the service or penalize a consumer contributing to the corporation  
21 or participating in any of its activities.

22 (g) No utility, or officer or employee of a utility, may interfere  
23 with or hinder the distribution of the check-off card or change mailing  
24 procedures so as to make the inclusion and distribution of the check-off  
25 card difficult or more expensive than necessary.

26 Sec. 42.40.150. BOARD OF DIRECTORS. (a) Initially there shall be  
27 seven members of the board of directors of the corporation. The attor-  
28 ney general, the speaker of the house, the majority leader of the house,  
29 the minority leader of the house, the president of the senate, the

1 majority leader of the senate, and the minority leader of the senate  
2 shall each appoint one member of the board.

3 (b) When contributions to the residential utility consumer action  
4 group corporation account first total \$10,000, the initial board of  
5 directors shall promptly call a meeting of the membership of the cor-  
6 poration to elect successor members to the initial board, in accordance  
7 with the requirements of this section.

8 (c) The board of directors shall be elected by the membership of  
9 the corporation at the annual membership meeting provided for in sec.  
10 260 of this chapter, except that the first board to be elected shall be  
11 elected at the time prescribed in (b) of this section. The terms of  
12 members of the board shall be staggered and drawn by lot, with one-third  
13 of the board elected annually, except that board members first elected  
14 to the board whose terms first expire serve until the next annual  
15 membership meeting only and the election of their successors at that  
16 meeting.

17 (d) The term of office for members of the board is three years,  
18 and no member may serve more than two consecutive terms.

19 (e) A candidate for election to the board shall be a member of the  
20 corporation.

21 (f) A petition for nomination to the board must be submitted to  
22 the incumbent board of directors not less than 60 days before the elec-  
23 tion. The petition must be signed by at least 15 members of the cor-  
24 poration. The board of directors shall verify the validity of the  
25 signatures.

26 (g) An official ballot listing the candidates for election to the  
27 board shall be mailed to the members of the corporation at least 30 days  
28 before the meeting held for the election. Each member has one vote in  
29 the election and, for his vote to be counted, must mail the ballot at

1 least 14 days before the meeting or submit the ballot in person at the  
2 meeting.

3 (h) Election to the board shall be by a simple majority of the  
4 votes cast. If there are more than two candidates and no one receives a  
5 majority, the candidate with the most votes shall be declared the  
6 winner.

7 (i) Each candidate for election to the board of directors shall  
8 file a statement of financial interests with the incumbent board at  
9 least 60 days before the election. The statement shall be furnished to  
10 a member upon request.

11 (j) The statement of financial interests shall be on a form de-  
12 veloped by the board of directors and approved by a majority of the  
13 members of the corporation; approval may be solicited by the board by  
14 mail or at a membership meeting. The form shall provide for the candi-  
15 date to disclose the following information:

16 (1) the identity, by name, of all corporation and organiza-  
17 tional directorships and fiduciary relationships held;

18 (2) a detailed description of all real estate in the state in  
19 which an interest, direct or indirect, is held, including an option to  
20 buy;

21 (3) the name of each creditor to whom money in excess of  
22 \$1,000 is owed, the nature of the amount owed, and the interest rate;

23 (4) the name of each business, insurance policy, or trust in  
24 which a financial interest exists, and the nature of the amount of the  
25 interest;

26 (5) the source, by name, and category of the amounts of any  
27 income, including capital gains, whether or not taxable, received during  
28 the preceding year;

29 (6) a list of businesses with which the candidate is asso-

1           ciated and which do business with a utility and a description of the  
2           nature of the business or regulation;

3           (7) if an attorney, accountant or engineer, a list of all  
4           clients doing business with a utility, and a description of the nature  
5           of the business;

6           (8) if an insurance or real estate agent, a list of all  
7           clients of the candidate or firm with which the candidate is associated  
8           who are a utility, an officer or employee of a utility, a consultant to  
9           a utility, or a shareholder of a utility.

10           Sec. 42.40.160. ADDITIONAL ELECTION PROCEDURES. (a) After the  
11           first election of the board of directors, the board shall develop addi-  
12           tional election procedures and standards to be approved by a majority of  
13           the members of the corporation.

14           (b) The board may adopt interim rules consistent with sec. 150 of  
15           this chapter for the first election governing voting procedures and  
16           challenges.

17           Sec. 42.40.170. ELIGIBILITY FOR THE BOARD OF DIRECTORS. No  
18           employee, consultant, shareholder, bondholder or spouse of any employee,  
19           shareholder or bondholder of a utility is eligible for election to the  
20           board of directors. If a member of the board becomes an employee,  
21           consultant, shareholder, bondholder or spouse of an employee, consul-  
22           tant, shareholder or bondholder of a utility, his seat becomes vacant.

23           Sec. 42.40.175. VACANCIES. To fill a vacancy occasioned by the  
24           failure of a person elected as a director to qualify, or in the event of  
25           death, removal, resignation, or disqualification of a member, a suc-  
26           cessor for the unexpired term shall be nominated and selected by a two-  
27           thirds majority of the remaining members of the board. The vacancies  
28           shall be filled within two meetings of the board.

29           Sec. 42.40.180. POWERS AND DUTIES. (a) The board has the power

1 to manage the affairs of the corporation and make expenditures for that  
2 purpose.

3 (b) The board has, in addition to other duties prescribed by law  
4 for nonprofit corporations, the following duties:

5 (1) submit to the membership at the membership meeting a  
6 financial report for the previous year;

7 (2) submit to the membership at the annual meeting a summary  
8 of its activities for the previous year;

9 (3) keep minutes, books and records which will reflect all of  
10 the acts and transactions of the board and which shall be subject to  
11 examination by any member;

12 (4) prepare periodic statements of the financial and sub-  
13 stantive operations of the corporation and make copies of each available  
14 to members and the public;

15 (5) cause its books to be audited by a competent certified  
16 public accountant at least once each fiscal year.

17 Sec. 42.40.190. MEETINGS, ANNUAL REPORTS AND EXPENSES. (a) The  
18 board of directors shall hold regular meetings at least quarterly on  
19 dates as it may determine. Special meetings may be called by the  
20 president or any four members upon at least 10 days notice. Four  
21 members of the board constitute a quorum.

22 (b) All meetings of the board shall be open to the public, includ-  
23 ing meetings of subcommittees of the board, except that personnel  
24 matters on majority vote of a quorum of the board or subcommittee,  
25 subjects tending to prejudice the personal reputation of a person and  
26 for which the person has not requested a public discussion, and matters  
27 required by law to be confidential shall be discussed in executive  
28 session. In addition, complete minutes of public meetings shall be kept  
29 and made available to members upon request at a charge not exceeding the

1 actual cost of making the minutes available. All reports, studies and  
2 financial data shall be open to public inspection during regular busi-  
3 ness hours.

4 (c) The board shall, as soon as practical after the close of the  
5 fiscal year, prepare and mail an annual report to each public library in  
6 the state.

7 (d) The members of the board shall be reimbursed for expenses  
8 necessarily incurred by them in the performance of their duties.

9 Sec. 42.40.200. REMOVAL OF BOARD MEMBERS. Members of the board of  
10 directors may be removed by petition of 10 per cent of the total members  
11 eligible to vote in the last election. No petition for recall may be  
12 filed within six months of the election of the board member. If a member  
13 of the board of directors is recalled, a new election for the seat shall  
14 be held within two months. The recalled member shall serve pending the  
15 election.

16 Sec. 42.40.210. BOND REQUIRED. Members of the board of directors  
17 and the staff eligible to disburse funds shall be bonded. The cost of  
18 the bonds shall be paid by the corporation.

19 Sec. 42.40.220. ELECTION OF OFFICERS. (a) At the first regular  
20 meeting of the board following the annual election, the board shall  
21 elect from its members a president, vice-president, a secretary and a  
22 treasurer. The officers shall hold office for the ensuing year and  
23 until their successors are elected, unless removed from office by the  
24 concurring vote of a majority of all the directors.

25 (b) In case of the death, resignation or removal of an officer,  
26 the board shall elect a successor to hold office for the remainder of  
27 the term for which that officer had been elected.

28 Sec. 42.40.230. DUTIES AND POWERS OF THE OFFICERS. The officers  
29 shall perform the duties customary to their offices and other duties as

1 delegated to them by the board of directors.

2 Sec. 42.40.240. EXECUTIVE DIRECTOR. The board of directors shall  
3 employ an executive director who shall be in immediate charge of the  
4 activities of the staff of the corporation, subject to the direction of  
5 the board of directors. The executive director shall exercise super-  
6 vision over the offices, facilities and personnel of the corporation and  
7 shall have custody of its books, records and mailing lists. The execu-  
8 tive director is subject to removal by the concurring vote of a majority  
9 of all the directors.

10 Sec. 42.40.250. CONSUMER COMPLAINTS. When the corporation re-  
11 ceives from a residential utility consumer a written complaint it shall,  
12 unless it determines that the complaint or information appears to be  
13 frivolous, promptly transmit the complaint or information to the appro-  
14 priate utility regulatory agency.

15 Sec. 42.40.260. ANNUAL MEMBERSHIP MEETING. The annual membership  
16 meeting of the corporation shall be held on a date in July and at a  
17 place in the state to be determined by the board of directors.

18 Sec. 42.40.270. MISCELLANEOUS PROVISIONS. (a) Nothing in this  
19 chapter

20 (1) limits the right of a consumer, or group or class of  
21 consumers or environmentalists, to initiate, intervene in, or otherwise  
22 participate in a utility regulatory agency or court proceedings or  
23 activity;

24 (2) requires a petition or notification to the corporation as  
25 a condition precedent to exercise of the right; or

26 (3) relieves a utility regulatory agency or court of an  
27 obligation, or affects its discretion, to permit intervention or parti-  
28 cipation by a consumer or group or class of consumers in such proceed-  
29 ings or activity.

1 (b) Nothing in this chapter precludes ownership by the corporation  
2 of one share of stock in a utility doing business in the state.

3 (c) Nothing in this chapter authorizes or obligates the state to  
4 assume or succeed to an obligation or liability of the corporation.

5 Sec. 42.40.280. PENALTIES. (a) A person who violates a provision  
6 of this chapter is subject to a civil penalty of not more than \$5,000  
7 for each violation.

8 (b) Each violation of sec. 140(f) or (g) of this chapter consti-  
9 tutes a separate and continuing violation.

10 (c) A director or officer of the corporation or other person who  
11 knowingly or wilfully violates a provision of this chapter or fails to  
12 perform a duty imposed under this chapter is guilty of a misdemeanor and  
13 upon conviction is punishable by imprisonment for a term not exceeding  
14 six months.

15 Sec. 42.40.290. DEFINITIONS. In secs. 100 - 290 of this chapter,

16 (1) "corporation" means the Residential Utility Consumer  
17 Action Group Corporation;

18 (2) "member" or "member of the corporation" means a resi-  
19 dential consumer who has contributed a minimum of \$1 to the Residential  
20 Utility Consumer Action Group Corporation in the corporation's preceding  
21 fiscal year, except as otherwise provided in sec. 100 of this chapter;

22 (3) "member" or "member of the board of directors" means a  
23 residential consumer legally elected to the board of directors of the  
24 corporation;

25 (4) "regulated public utility" or "utility" means a utility  
26 as defined in AS 42.05.701;

27 (5) "residential consumer" or "residential utility consumer"  
28 means a person billed by a utility under a residential rate or a person  
29 whose rent for lodging includes payment for such utilities;

1 (6) "utility regulatory agency" or "agency" means the Alaska  
2 Public Utilities Commission (AS 42.05), a political subdivision of the  
3 state, or board or other agency of it, or an agency or instrumentality  
4 of the United States having jurisdiction to establish rates and charges  
5 for the sale of utility services, siting of power plants, protection of  
6 the environment, or general review authority over energy matters affect-  
7 ing the state.

8 \* Sec. 3. AS 42.40.135 in sec. 2 of this Act has the effect of changing  
9 Rule 24, Rules of Civil Procedure, by broadening the scope of intervention of  
10 right in civil actions for the nonprofit Residential Utility Consumer Action  
11 Group Corporation.  
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