

1 **PUBLIC UTILITY AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David Ure**

5 AN ACT RELATING TO PUBLIC UTILITIES; SPECIFYING THE DUTIES OF THE PUBLIC
6 SERVICE COMMISSION; CREATING AND PRESCRIBING DUTIES OF THE OFFICE OF
7 THE PUBLIC ADVOCATE AND THE ADVISORY BOARD; REPEALING SECTIONS
8 RELATING TO THE DIVISION OF PUBLIC UTILITIES AND THE COMMITTEE OF
9 CONSUMER SERVICES; PRESCRIBING A BALANCING TEST FOR THE
10 DETERMINATION OF WHAT IS JUST AND REASONABLE AND IN CARRYING OUT
11 DUTIES; ENACTING AND MODIFYING PROVISIONS FOR INFORMAL AND
12 EXPEDITIOUS RESOLUTION OF ISSUES; CLARIFYING THE COMMISSION'S USE OF A
13 TEST YEAR IN RATE CASES; AMENDING THE PROCEDURE FOR RECOVERING
14 CERTAIN FUEL AND ENERGY COSTS; REPLACING THE UTILITY GROSS PROCEEDS
15 FEE WITH THE UTILITY REGULATION TAX; MAKING TECHNICAL CHANGES;
16 PROVIDING AN EFFECTIVE DATE; AND PROVIDING A PROCEDURE FOR THE
17 TRANSITION PERIOD.

18 This act affects sections of Utah Code Annotated 1953 as follows:

19 AMENDS:

20 **13-1-2**, as last amended by Chapter 313, Laws of Utah 1994

21 **54-1-1**, as last amended by Chapter 246, Laws of Utah 1983

22 **54-1-3**, as last amended by Chapter 246, Laws of Utah 1983

23 **54-1-6**, as last amended by Chapters 101 and 122, Laws of Utah 1988

24 **54-1-6.5**, as enacted by Chapter 246, Laws of Utah 1983

25 **54-1-7**, as last amended by Chapter 246, Laws of Utah 1983

26 **54-1-10**, as last amended by Chapter 246, Laws of Utah 1983

27 **54-1-11**, as enacted by Chapter 246, Laws of Utah 1983

- 28 **54-3-1**, as last amended by Chapter 206, Laws of Utah 1977
- 29 **54-3-21**, Utah Code Annotated 1953
- 30 **54-4-1.1**, as enacted by Chapter 50, Laws of Utah 1984
- 31 **54-4-4**, as last amended by Chapter 166, Laws of Utah 1975
- 32 **54-7-1**, as last amended by Chapter 161, Laws of Utah 1987
- 33 **54-7-1.5**, as enacted by Chapter 246, Laws of Utah 1983
- 34 **54-7-12**, as last amended by Chapter 170, Laws of Utah 1996
- 35 **54-7-15**, as last amended by Chapter 161, Laws of Utah 1987
- 36 **54-8b-13**, as enacted by Chapter 141, Laws of Utah 1990
- 37 **54-8b-17**, as enacted by Chapter 96, Laws of Utah 1998
- 38 **54-8b-18**, as enacted by Chapter 113, Laws of Utah 1999
- 39 **67-1-13**, as enacted by Chapter 307, Laws of Utah 1999

40 ENACTS:

- 41 **54-1-6.7**, Utah Code Annotated 1953
- 42 **54-4-37**, Utah Code Annotated 1953
- 43 **54-5a-1**, Utah Code Annotated 1953
- 44 **54-5a-2**, Utah Code Annotated 1953
- 45 **54-5a-3**, Utah Code Annotated 1953
- 46 **54-5a-4**, Utah Code Annotated 1953
- 47 **54-7-11.5**, Utah Code Annotated 1953
- 48 **54-10a-1**, Utah Code Annotated 1953
- 49 **54-10a-2**, Utah Code Annotated 1953
- 50 **54-10a-3**, Utah Code Annotated 1953
- 51 **54-10a-4**, Utah Code Annotated 1953
- 52 **54-10a-5**, Utah Code Annotated 1953
- 53 **54-10a-6**, Utah Code Annotated 1953
- 54 **54-10a-7**, Utah Code Annotated 1953
- 55 **54-10a-8**, Utah Code Annotated 1953

56 REPEALS:

- 57 **54-4-1.5**, as enacted by Chapter 246, Laws of Utah 1983
- 58 **54-4a-1**, as last amended by Chapter 225, Laws of Utah 1989

- 59 **54-4a-2**, as last amended by Chapter 225, Laws of Utah 1989
 60 **54-4a-3**, as last amended by Chapter 122, Laws of Utah 1988
 61 **54-4a-4**, as enacted by Chapter 246, Laws of Utah 1983
 62 **54-4a-5**, as enacted by Chapter 246, Laws of Utah 1983
 63 **54-4a-6**, as enacted by Chapter 246, Laws of Utah 1983
 64 **54-5-1.5**, as last amended by Chapter 170, Laws of Utah 1996
 65 **54-5-2**, as last amended by Chapter 214, Laws of Utah 1993
 66 **54-5-3**, as last amended by Chapter 214, Laws of Utah 1993
 67 **54-5-4**, Utah Code Annotated 1953
 68 **54-8b-12**, as last amended by Chapter 122, Laws of Utah 1997
 69 **54-10-1**, as enacted by Chapter 54, Laws of Utah 1977
 70 **54-10-2**, as last amended by Chapter 243, Laws of Utah 1996
 71 **54-10-3**, as last amended by Chapter 243, Laws of Utah 1996
 72 **54-10-4**, as enacted by Chapter 54, Laws of Utah 1977
 73 **54-10-4.5**, as enacted by Chapter 216, Laws of Utah 1981
 74 **54-10-5**, as last amended by Chapters 20 and 215, Laws of Utah 1995
 75 **54-10-6**, as enacted by Chapter 54, Laws of Utah 1977
 76 **54-10-7**, as last amended by Chapter 20, Laws of Utah 1995

77 This act enacts uncodified material.

78 *Be it enacted by the Legislature of the state of Utah:*

79 Section 1. Section **13-1-2** is amended to read:

80 **13-1-2. Creation and functions of department -- Divisions created -- Fees.**

81 (1) (a) There is created the Department of Commerce.

82 (b) The department shall execute and administer state laws regulating business activities
 83 and occupations affecting the public interest.

84 (2) Within the department the following divisions are created:

85 (a) the Division of Occupational and Professional Licensing;

86 (b) the Division of Real Estate;

87 (c) the Division of Securities;

88 (d) the [~~Division of Public Utilities~~] Office of the Public Advocate;

89 (e) the Division of Consumer Protection; and

90 (f) the Division of Corporations and Commercial Code.

91 (3) (a) Unless otherwise provided by statute, the department may adopt a schedule of fees
92 assessed for services provided by the department by following the procedures and requirements
93 of Section 63-38-3.2.

94 (b) The department shall submit each fee established in this manner to the Legislature for
95 its approval as part of the department's annual appropriations request.

96 (c) (i) All fees collected by each division and by the department shall be deposited in a
97 restricted account within the General Fund known as the Commerce Service Fund.

98 (ii) At the end of each fiscal year, the director of the Division of Finance shall transfer into
99 the General Fund any fee collections that are greater than the department's legislative appropriation
100 for that year.

101 (d) The department may not charge or collect any fee nor expend monies from this fund
102 without approval by the Legislature.

103 Section 2. Section **54-1-1** is amended to read:

104 **54-1-1. Establishment of commission -- Functions.**

105 (1) The Public Service Commission [~~of Utah~~] is established as an independent agency. The
106 [~~Public Service~~] commission is charged with discharging the duties and exercising the legislative,
107 adjudicative, and rulemaking powers committed to it by law and may sue and be sued in its own
108 name.

109 (2) In the discharge of its duties under this title, the commission shall balance the interests
110 of:

111 (a) consumers of public utility services in the state; and

112 (b) public utilities providing services in the state.

113 (3) The commission shall objectively balance the interests of consumers and public
114 utilities in a manner that will insure that:

115 (a) consumers obtain safe, efficient, and reliable utility services at a fair price; and

116 (b) prices for utility services are sufficient to:

117 (i) assure confidence in the financial integrity and well-being of the public utility; and

118 (ii) yield returns to equity holders commensurate with returns on investments in other
119 business enterprises having corresponding risks.

120 (4) In balancing the interests of consumers and public utilities, the commission:

121 (a) shall resolve matters subject to its jurisdiction promptly, fairly, and, if possible, in a
122 nonadversarial manner; and

123 (b) may consider the following:

124 (i) promoting the safe, healthy, economic, efficient, and reliable operation of public
125 utilities and their services, instrumentalities, equipment, and facilities;

126 (ii) providing reasonable classifications, rules, regulations, practices, and service of public
127 utilities;

128 (iii) making the regulatory process as simple and understandable as possible so that it is:

129 (A) acceptable to the public;

130 (B) feasible, expeditious, and efficient to apply; and

131 (C) designed to minimize controversies over interpretation and application;

132 (iv) promoting efficient management and operation of public utilities;

133 (v) providing for fair apportionment of public utility charges among customer categories
134 and individual customers and preventing undue discrimination in rate relationships;

135 (vi) promoting stability in prices for customers and financial stability for utilities from year
136 to year;

137 (vii) protecting against wasteful use of public utility services;

138 (viii) providing methods of reducing wide periodic variations in the demand for products,
139 commodities, or services; and

140 (ix) encouraging conservation of resources and energy.

141 (5) When applying a just and reasonable standard in the performance of its duties under
142 this title, the commission shall balance the interests of consumers and the public utility as
143 prescribed in this section.

144 (6) If any provision in this section, Subsection 54-1-6(5), Subsection 54-1-6.5(2),
145 Subsection 54-3-1(4), or Section 54-10a-6 conflicts with Title 54, Chapter 8b, Public
146 Telecommunications Law, then the provisions in Title 54, Chapter 8b, Public Telecommunications
147 Law, shall control.

148 Section 3. Section **54-1-3** is amended to read:

149 **54-1-3. Transaction of business by commissioners -- Quorum -- Proceedings by less**
150 **than majority or administrative law judge -- Effect of actions.**

151 (1) (a) A majority of the commissioners shall constitute a quorum for:

- 152 (i) the transaction of any business~~[, for]~~;
- 153 (ii) the performance of any duty; or [for]
- 154 (iii) the exercise of any power of the commission.

155 (b) Any action taken by a majority of the commission shall be ~~[deemed]~~ considered the

156 action of the commission. ~~[Any]~~

157 (c) A vacancy in the commission ~~[shall]~~ does not impair the right of the remaining

158 commissioners to exercise ~~[all]~~ the powers of the commission ~~[so long as]~~ if a majority of the

159 commission remains.

160 (d) The commission may hold hearings at any time or place within or without the state.

161 (2) ~~[The]~~ (a) Except as provided in Subsection (2)(b), the following proceedings shall be

162 heard by ~~[at least]~~ a majority of the commissioners:

163 ~~[(a) General]~~ (i) general rate proceedings to establish rates for public utilities ~~[which]~~ that

164 have annual revenues generated from Utah utility service in excess of \$200,000,000; or

165 ~~[(b) Any]~~ (ii) any proceeding which the commission determines involves an issue of

166 significant public interest.

167 (b) If a commission proceeding requiring a majority has commenced and the unavoidable

168 absence of one or more commissioners results in less than a majority being available to continue

169 the proceeding, the proceeding may continue before a single commissioner or specified

170 administrative law judge only upon agreement of the involved public utility and, if it is a party, the

171 ~~[Division of Public Utilities]~~ Office of the Public Advocate.

172 (3) Any other investigation, inquiry, hearing, or proceeding which the commission has

173 power to undertake may be conducted before less than a majority of the commission or before an

174 administrative law judge appointed by the commission.

175 (4) ~~[All proceedings]~~ (a) Any proceeding conducted before less than a majority of the

176 commission or before an administrative law judge shall be ~~[deemed proceedings]~~ considered a

177 proceeding of the commission; and

178 (b) the findings, orders, and decisions made by less than a majority of the commission or

179 by an administrative law judge, when approved and confirmed by the commission and filed in its

180 office, shall be ~~[deemed]~~ considered findings, orders, and decisions of the commission and shall

181 have the same effect as if originally made by the commission.

182 Section 4. Section **54-1-6** is amended to read:

183 **54-1-6. Employment of staff -- Status and compensation -- Employees not to be**
184 **parties or witnesses and may not appeal commission decisions.**

185 (1) (a) The annual budget of the [~~Public Service~~] commission shall provide sufficient
186 funds for the commission to hire, develop, and organize an advisory staff to assist the commission
187 in performing the powers, duties, and functions committed to it by statute.

188 [~~(a)~~] (b) The commission may hire:

189 (i) economists, accountants, engineers, statisticians, lawyers, law clerks, and other
190 professional and technical experts;

191 (ii) court reporters, transcribers of tape recordings, clerks, secretaries, and other
192 administrative and support staff;

193 (iii) additional experts as required for a particular matter; and

194 (iv) administrative law judges, who shall be members of the Utah State Bar, and constitute
195 a separate organizational unit reporting directly to the commission.

196 [~~(b)~~] (c) The commission may provide for funds in the annual budget to acquire suitable
197 electronic recording equipment to maintain a verbatim record of [~~proceedings~~] hearings before the
198 commission, any commissioner, or any administrative law judge.

199 (2) (a) With the exception of clerical workers in nonconfidential positions, all staff of the
200 [~~Public Service~~] commission are exempt employees under [~~the~~] Title 67, Chapter 19, Utah State
201 Personnel Management Act, and serve at the pleasure of the chair of the commission.

202 (b) Administrative law judges are exempt employees under [~~the~~] Title 67, Chapter 19,
203 Utah State Personnel Management Act, and may only be removed from office upon due notice and
204 by a unanimous vote of the commission.

205 (c) (i) The Department of Human Resource Management shall determine pay schedules
206 using standard techniques for determining compensation.

207 (ii) The Department of Human Resource Management may make its compensation
208 determinations based upon compensation practices common to utility companies throughout the
209 United States.

210 (3) (a) [~~The staff or other employees of the commission may not~~] Except as otherwise
211 provided in this title, no member of the commission's staff or other commission employee may
212 appear as [~~parties~~] a party or [~~witnesses~~] witness in any proceeding before the commission, any
213 commissioner, or any administrative law judge.

214 (b) The commission's staff or ~~[other]~~ employees ~~[of the commission]~~ may not apply for
215 a rehearing of or appeal any finding, order, or decision of the commission.

216 (4) The commission may, with respect to any matter within its jurisdiction, direct the
217 commission staff to:

218 (a) conduct research, studies, and investigations;

219 (b) provide information, documents, or records to the commission;

220 (c) make recommendations regarding public utility regulations, policy, and long-range
221 planning on matters within the commission's jurisdiction;

222 (d) assess the impact of utility rate changes;

223 (e) receive and review consumer complaints regarding matters within the commission's
224 jurisdiction;

225 (f) review proposals or applications filed with the commission; and

226 (g) assist the commission in facilitating the resolution of matters brought before the
227 commission under Section 54-7-11.5.

228 (5) In performing its duties, the commission staff shall balance the interests of consumers
229 and public utilities in the same manner as the commission is directed in Section 54-1-1.

230 Section 5. Section **54-1-6.5** is amended to read:

231 **54-1-6.5. Executive staff director -- Appointment -- Functions.**

232 (1) The chair of the commission shall appoint an executive staff director, who shall:

233 (a) serve at the pleasure of the ~~[commission and shall]~~ chair;

234 (b) supervise and coordinate staff functions[;];

235 (c) assist the ~~[chairman of the commission]~~ chair with administrative duties[;]; and

236 (d) perform any other duties the commission may direct.

237 (2) In performing his or her duties, the executive staff director shall balance the interests
238 of consumers and public utilities in the same manner as the commission is directed in Section
239 54-1-1.

240 Section 6. Section **54-1-6.7** is enacted to read:

241 **54-1-6.7. Investigations, audits -- Notice -- Adjudicative proceeding.**

242 (1) Any investigation, study, audit, inspection, action, or request for discovery of

243 information pursuant to this title, shall be preceded by reasonable advance notice to the person or

244 entity against whom an investigation, study, audit, inspection, enforcement, or discovery is sought.

245 (2) The person or entity under Subsection (1) may require that an adjudicative proceeding
 246 be commenced prior to the initiation of an investigation, study, audit, inspection, action, or
 247 discovery by commission staff.

248 Section 7. Section **54-1-7** is amended to read:

249 **54-1-7. Secretary of commission -- Appointment -- Functions.**

250 (1) The chair of the commission [may] shall appoint a secretary of the commission, who
 251 shall serve at the pleasure of the [commission] chair.

252 (2) It shall be the duty of the secretary to keep a full and true record of [all]:

253 (a) the adjudicative proceedings of the commission [~~and of all~~];

254 (b) determinations, rulings, and orders made by the commission, or by any of the
 255 commissioners[~~;~~]; and [of]

256 (c) the approval and confirmation by the commission of the determinations, rulings, and
 257 orders made by individual commissioners or administrative law judges.

258 (3) The secretary shall:

259 (a) be the custodian of the records of the commission[~~;~~and shall];

260 (b) file and preserve at its general office [all] any books, profiles, tariffs, schedules,
 261 reports, maps [~~and~~], documents, and [all] papers [~~whatsoever~~] filed with [it] the commission or
 262 entrusted to its care[~~;~~]; and [~~the secretary shall~~]

263 (c) be responsible to the commission for the custody [thereof] of the items specified in
 264 Subsection (3)(b).

265 (4) Under the direction of the commission, the secretary shall:

266 (a) superintend its clerical business[~~;~~];

267 (b) conduct its correspondence[~~;~~];

268 (c) give notice of [all] hearings, determinations, rulings, and orders of the commission[~~;~~];

269 (d) prepare for service papers and notices required by the commission[~~;~~]; and

270 (e) perform other duties the commission may prescribe.

271 (5) The secretary [shall have power to] may administer [oaths] an oath in [all parts] any
 272 part of the state in [all proceedings]:

273 (a) any proceeding by or before the commissioners [~~and~~]; or

274 (b) in [all cases] any case or [matters] matter pertaining to the duties of the office of
 275 secretary.

276 (6) In the absence of the secretary, the [~~commission~~] chair may designate another
277 individual to perform the secretary's duties.

278 Section 8. Section **54-1-10** is amended to read:

279 **54-1-10. Conservation planning -- Annual reports.**

280 (1) The [~~Public Service~~] commission shall engage in long-range planning regarding public
281 utility regulatory policy in order to facilitate the well-planned development and conservation of
282 utility resources.

283 (2) (a) The commission shall make and submit to the governor and the Legislature an
284 annual report containing a full and complete account of the transactions of its office, together with
285 any facts, suggestions, and recommendations it [~~may deem~~] considers necessary.

286 (b) The [~~Division of Public Utilities~~] Office of the Public Advocate shall provide any
287 assistance the commission may require in the preparation of the annual report.

288 (c) The report shall be made and submitted by October 1 of each year, or as soon after as
289 may be feasible, and shall be published as are the reports of other departments of the state.

290 Section 9. Section **54-1-11** is amended to read:

291 **54-1-11. Prohibited interests, relationships, and actions by commissioners and**
292 **employees.**

293 (1) No person employed as a commissioner or as personnel of the commission shall, while
294 so employed:

295 (a) have any direct pecuniary interest, whether as the holder of stock or other securities,
296 or otherwise have any conflict of interest with any public utility or other entity subject to the
297 jurisdiction of the commission;

298 (b) have any office, position, or relationship, or be engaged in any business or avocation
299 which interferes or is incompatible with the effective and objective fulfillment of the duties of
300 office or employment with the commission;

301 (c) accept any gift, gratuity, emolument, or employment in violation of Title 67, Chapter
302 16, Utah Public Officers' and Employees' Ethics Act, from any public utility or other entity subject
303 to the jurisdiction of the commission or from any other officer, agent, or employee thereof; or

304 (d) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any
305 person or entity to any office or employment with any public utility or other entity subject to the
306 jurisdiction of the [~~Public Service~~] commission.

307 (2) No officer, agent, attorney, or employee of any public utility or other entity subject to
308 the jurisdiction of the commission shall [~~directly or indirectly solicit, request, or recommend to the~~
309 ~~governor, any state senator, the commission, or the Division of Public Utilities the appointment~~
310 ~~of any person as a commissioner or as executive director of the commission, or the appointment~~
311 ~~of any person to any commission staff position]~~ offer to any member of the commission or its
312 personnel, any gift, gratuity, emolument, or employment that the member of the commission or
313 its personnel are prohibited from accepting under Title 67, Chapter 16, Utah Public Officers' and
314 Employees' Ethics Act.

315 Section 10. Section **54-3-1** is amended to read:

316 **54-3-1. Charges must be just, service adequate, rules reasonable.**

317 [~~All charges]~~ (1) (a) Each charge made, demanded, or received by any public utility[, or
318 ~~by any two or more public utilities,]~~ for any product or commodity furnished or to be furnished,
319 or for any service rendered or to be rendered, shall be just and reasonable. [~~Every]~~

320 (b) Any unjust or unreasonable charge made, demanded, or received for [~~such]~~ a product
321 [~~or,]~~ commodity, or service specified in Subsection (1)(a) is [~~hereby]~~ prohibited [~~and declared~~
322 ~~unlawful. Every]~~.

323 (2) Each public utility shall furnish, provide, and maintain [~~such]~~ service,
324 instrumentalities, equipment, and facilities [~~as]~~ that:

325 (a) will promote the safety, health, comfort, and convenience of its patrons, employees,
326 and the public[, and as will]; and

327 (b) be in all respects adequate, efficient, just and reasonable. [~~All rules and regulations]~~

328 (3) Each rule or regulation made by a public utility affecting or pertaining to its charges
329 or service to the public shall be just and reasonable. [~~The scope of definition "just and reasonable"~~
330 ~~may include, but shall not be limited to, the cost of providing service to each category of customer,~~
331 ~~economic impact of charges on each category of customer, and on the well-being of the state of~~
332 ~~Utah; methods of reducing wide periodic variations in demand of such products, commodities or~~
333 ~~services, and means of encouraging conservation of resources and energy.]~~

334 (4) The application of a just and reasonable standard to the charges, service,
335 instrumentalities, equipment, facilities, rules, and regulations of a public utility shall be consistent
336 with the balancing of interests as prescribed in Section 54-1-1.

337 Section 11. Section **54-3-21** is amended to read:

338 **54-3-21. Commission to be furnished information and copies of records --**
339 **Adjudicative hearings before commission to be public -- Privilege.**

340 (1) ~~[Every]~~ Each public utility shall:

341 (a) furnish to the commission, in ~~[such]~~ the form and ~~[such]~~ with the detail as the
342 commission ~~[shall]~~ may prescribe ~~[all], any~~ tabulations ~~[and],~~ computations, and ~~[all]~~ other
343 information required by it to carry into effect any of the provisions of this title~~[-];~~ and ~~[shall]~~

344 (b) make specific answers to ~~[all questions]~~ any question submitted by the commission.

345 (2) ~~[Every]~~ Each public utility receiving from the commission any ~~[blanks]~~ document with
346 directions to ~~[fill the same]~~ provide information shall ~~[cause the same to be properly filled so as~~
347 ~~to answer]~~ respond to each information request fully and correctly ~~[each question propounded~~
348 ~~therein; in case].~~ If it is unable to answer any question, it shall give a good and sufficient reason
349 for ~~[such]~~ the failure.

350 (3) ~~[Whenever]~~ When required by the commission ~~[every],~~ each public utility shall deliver
351 to the commission:

352 (a) copies of any ~~[or all]~~ maps, profiles, contracts, agreements, franchises, reports, books,
353 accounts, papers ~~[and],~~ or records;

354 (i) in its possession ~~[or];~~

355 (ii) in any way relating to its property; or

356 (iii) affecting its business~~[-, and also];~~ or

357 (b) a complete inventory of ~~[all]~~ its property in ~~[such]~~ the form as the commission may
358 direct.

359 (4) ~~[Hearings]~~ (a) Adjudicative hearings or adjudicative proceedings of the commission
360 or of any commissioner shall be open to the public~~[-, and all].~~

361 (b) Except as provided in Subsection (4)(c), records of ~~[all]~~ adjudicative hearings ~~[or],~~
362 adjudicative proceedings ~~[or],~~ and orders, rules ~~[or],~~ and investigations by the commission or any
363 commissioner shall be at all times open to the public~~[-, provided, that any].~~

364 (c) Any information furnished the commission by a public utility or by any officer, agent,
365 or employee of any public utility may be withheld from the public ~~[whenever]~~ when and during
366 ~~[such]~~ the period of time ~~[as]~~ the commission ~~[may determine]~~ determines that it is ~~[for]~~ in the best
367 interests of the public, including the public utility, to withhold ~~[such]~~ the information.

368 (d) Any officer or employee of the commission who in violation of the provisions of this

369 Subsection (4) divulges any such information is guilty of a misdemeanor.

370 Section 12. Section **54-4-1.1** is amended to read:

371 **54-4-1.1. Wholesale electrical cooperative exempt from rate regulation --**

372 **Requirements for rate increase.**

373 (1) The commission [does] may not [have the authority under the provisions of this title
374 to] regulate, fix, or otherwise approve or establish the rates, fares, tolls, or charges of a wholesale
375 electrical cooperative.

376 (2) A wholesale electrical cooperative [shall] may not vary its charges within any type or
377 classification of service to any member or the public, one from the other, or from schedules of
378 rates, fares, tolls, or charges which schedules shall be filed at least annually with the [Division of
379 Public Utilities] Office of the Public Advocate for informational purposes only.

380 (3) The prohibition of this section applies only to the rates, fares, tolls, or charges and does
381 not exempt wholesale electrical cooperatives from other areas of regulation under this title
382 including[, but not limited to,] regulation having an indirect effect on rates, fares, tolls, or charges
383 but which does not constitute an approval or establishment of them.

384 (4) (a) (i) A wholesale electrical cooperative must, prior to the implementation of any rate
385 increase after January 1, 1984, hold a public meeting for [all] its customers and members.

386 (ii) Notice must be mailed at least ten days prior to the meeting. [~~In addition, any~~]

387 (b) Any schedule of new rates or other change that results in new rates must be approved
388 by the board of directors of the wholesale electrical cooperative.

389 Section 13. Section **54-4-4** is amended to read:

390 **54-4-4. Classification and fixing of rates after hearing.**

391 (1) [~~Whenever~~] If the commission [shall find] finds after a hearing that the rates, fares,
392 tolls, rentals, charges₂ or classifications[, or any of them] demanded, observed, charged₁ or
393 collected by any public utility for, or in connection with, any service [or]₂ product₂ or commodity,
394 [~~or in connection therewith,~~] including the rates or fares for excursion or commutation tickets, or
395 that the rules, regulations, practices₂ or contracts[, or any of them,] affecting [such] the rates, fares,
396 tolls, rentals, charges₂ or classifications[, or any of them,] are unjust, unreasonable, discriminatory
397 [or]₂ preferential, or [~~in anywise~~] otherwise in violation of any provisions of law, or that [such] the
398 rates, fares, tolls, rentals, charges₂ or classifications are insufficient, the commission shall
399 determine the just, reasonable₂ or sufficient rates, fares, tolls, rentals, charges, classifications, rules,

400 regulations, practices, or contracts to be thereafter observed and in force, and shall fix the same
401 by order as [hereinafter] provided in this section.

402 (2) The commission [shall have power to] may:

403 (a) investigate [a single rate, fare, toll, rental, charge, classification, rule, regulation,
404 contract or practice, or any number thereof, or the entire schedule or]:

405 (i) one or more rates, fares, tolls, rentals, charges, classifications, rules, regulations,
406 contracts, or practices of any public utility; or

407 (ii) one or more schedules of rates, fares, tolls, rentals, charges, classifications, rules,
408 regulations, contracts [and], or practices[, or any number thereof,] of any public utility[, and to];
409 and

410 (b) establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules,
411 regulations, contracts [or], practices, or [schedule or] schedules in lieu [thereof] of them.

412 (3) (a) [~~The commission, in~~] In its determination of just and reasonable rates, [may
413 consider recent changes in the utility's financial condition or changes reasonably expected, but not
414 speculative, in the utility's revenues, expenses or investments and may adopt an appropriate future
415 test period, not exceeding twelve] if the commission uses a test period, it shall select a test period
416 that is demonstrated by the evidence to best reflect conditions that the public utility will encounter
417 during the period when the rates will be in effect.

418 (b) In establishing the test period, the commission may use:

419 (i) a future test period based on projected data not exceeding 20 months from the date of
420 filing[, including projections or projections together with a period of actual operations in
421 determining the utility's test year for rate-making purposes.];

422 (ii) a test period based on historic data that are adjusted for known and measurable
423 changes; or

424 (iii) a combination of future projections and historic data.

425 (c) If the test period is not based exclusively on future projections, the commission shall
426 consider recent changes outside the test period which are known in nature and measurable in
427 amount.

428 Section 14. Section **54-4-37** is enacted to read:

429 **54-4-37. Transactions with utility affiliates -- Presumptions.**

430 (1) If an affiliate of a public utility provides goods or services to, or performs functions

431 for, a public utility, and the goods, services, or functions are subject to competition or to economic
432 regulation by another governmental agency, the provision of those goods, services, or functions
433 may not be regulated by the commission.

434 (2) A public utility's transactions with an affiliate do not carry any presumption of
435 unreasonableness but shall be subject to a normal prudence review on the same basis as if the
436 transactions were made with an unaffiliated entity.

437 (3) Nothing in this section shall affect the obligations of a telecommunications corporation
438 under:

439 (a) Section 251, 252, or 253 of the Federal Telecommunications Act of 1996, Pub. L. No.
440 104-104, 110 Stat. 56; or

441 (b) Title 54, Chapter 8b, Public Telecommunications Law.

442 Section 15. Section **54-5a-1** is enacted to read:

443 **CHAPTER 5a. PUBLIC UTILITY REGULATION TAX**

444 **54-5a-1. Regulation tax.**

445 (1) A tax is imposed upon the gross operating revenue of each public utility subject to the
446 jurisdiction of the commission.

447 (2) The tax shall be the greater of:

448 (a) 3/10 of 1% of the public utility's gross operating revenues for the preceding calendar
449 year derived from each public utility's business and operations during that period within this state;
450 or

451 (b) \$50.

452 (3) The following revenue is exempt from the tax imposed by this chapter:

453 (a) revenue derived from interstate business; and

454 (b) revenue of a wholesale electric cooperative derived from the sale of power to a rural
455 electric cooperative which resells that power within the state.

456 (4) The tax is due and payable to the Department of Commerce on or before July 1 of each
457 year.

458 (5) The Department of Commerce shall remit the tax to the state treasurer.

459 (6) The proceeds of the tax shall be used for:

460 (a) the administration, support, and maintenance of the commission and the Office of the
461 Public Advocate;

462 (b) expenditures by the Office of the Attorney General to provide legal counsel for the
463 commission and the Office of the Public Advocate; and

464 (c) the support and maintenance of any other programs, services, or functions provided by
465 the state, as appropriated by the Legislature.

466 Section 16. Section **54-5a-2** is enacted to read:

467 **54-5a-2. Basis of the tax.**

468 (1) The gross operating revenues of a public utility shall be determined by the executive
469 director of the Department of Commerce from:

470 (a) the annual gross revenue reports filed with the commission; and

471 (b) other sources of information prescribed by rule of the commission.

472 (2) (a) A public utility liable for the tax assessed under this chapter shall file a report with
473 the commission showing its gross operating revenue subject to the tax on or before April 15 of
474 each tax year.

475 (b) If the public utility fails to file the report as required under Subsection (2)(a), the
476 executive director of the Department of Commerce shall:

477 (i) compute or estimate the amount of tax due and payable; and

478 (ii) assess the tax against the public utility.

479 Section 17. Section **54-5a-3** is enacted to read:

480 **54-5a-3. Default in payment of tax -- Procedure to collect -- Penalties.**

481 (1) If the tax imposed under this chapter is due and the payment is in default, a lien in the
482 amount of the tax may be filed against the property of the utility and may be foreclosed in an action
483 brought by the executive director of the Department of Commerce in the district court of any
484 county in which property of the delinquent utility is located.

485 (2) (a) If the tax computed and imposed under this chapter is not paid within 60 days after
486 it becomes due, the rights and privileges of the delinquent utility shall be suspended.

487 (b) The executive director of the Department of Commerce shall transmit the name of the
488 utility to the Public Service Commission, which may immediately enter an order suspending the
489 operating rights of the utility.

490 Section 18. Section **54-5a-4** is enacted to read:

491 **54-5a-4. Penalties.**

492 (1) Any utility whose operating rights have been suspended under Section 54-5a-3 which

493 exercises or attempts to exercise any right or privilege as a utility during the time period for which
494 its operating rights have been suspended is guilty of a class B misdemeanor.

495 (2) Each day's violation shall constitute a separate offense.

496 (3) Jurisdiction of the offense shall be held to be in any county in which any part of the
497 transaction of business occurred.

498 (4) Each contract made in violation of this section is unenforceable by the corporation.

499 Section 19. Section **54-7-1** is amended to read:

500 **54-7-1. Settlement -- Limitation of issues.**

501 (1) Informal resolution, by agreement of the parties, of matters before the commission is
502 encouraged[.] as a means to:

503 (a) resolve disputes while minimizing time and expense to public utilities, the state, and
504 consumers;

505 (b) enhance administrative efficiency; and

506 (c) enhance the regulatory process by allowing the commission to concentrate on those
507 issues which adverse parties cannot otherwise resolve.

508 (2) The commission may [~~approve any agreement after considering the interests of the~~
509 ~~public and other affected persons]~~ use settlement proposals to resolve disputed matters, while
510 reserving to the parties the right to maintain confidentiality in the negotiation process.

511 (3) (a) At any time before or during [~~a hearing or]~~ an adjudicative proceeding before the
512 commission, the parties, between themselves or with the commission or a commissioner, may
513 engage in settlement conferences and negotiations.

514 (b) The commission may adopt [~~any settlement proposal of the parties and may enter an~~
515 ~~order based upon the proposal.~~] settlement proposals entered into by one or more of the parties,
516 including all parties initiating a proceeding and all parties against whom a proceeding is initiated.

517 (c) The commission shall notify all parties to the proceeding of the terms of any proposed
518 settlement.

519 (d) The commission may adopt settlement proposals that are just and reasonable in result
520 and is not required to inquire into:

521 (i) each individual component or aspect of the settlement;

522 (ii) each fact upon which the settlement is based; or

523 (iii) each position of the parties.

524 (e) The commission may adopt a settlement proposal without testimony or a hearing,
525 unless it is contested by the party initiating the proceeding or the party against whom the
526 proceeding is initiated.

527 (f) The commission may order a hearing at the request of an intervening party.

528 (g) The commission shall accept or reject settlement proposals within a reasonable time.

529 (4) In cases or procedures involving rate increases as defined in Section 54-7-12, the
530 commission may limit the factors and issues to be considered in its determination of just and
531 reasonable rates.

532 Section 20. Section **54-7-1.5** is amended to read:

533 **54-7-1.5. Communications between commission personnel and parties restricted.**

534 (1) For purposes of this section, "ex parte communications" do not include:

535 (a) discussions with the commission and its staff during initial settlement conferences
536 established under Section 54-7-11.5; or

537 (b) communications between parties or their counsel and the commission regarding:

538 (i) the form and content of draft orders; or

539 (ii) findings of fact or conclusions of law made by the commission.

540 (2) No member of the [Public Service] commission, administrative law judge, or
541 commission employee who is or may reasonably be expected to be involved in the
542 decision-making process, shall make or knowingly cause to be made to any party any
543 communication relevant to the merits of any matter under [adjudication] adjudicative proceedings,
544 unless notice and an opportunity to be heard are afforded to all parties.

545 (3) (a) No party shall make or knowingly cause to be made to any member of the
546 commission, administrative law judge, or commission employee who is or may reasonably be
547 expected to be involved in the decision-making process, an ex parte communication relevant to
548 the merits of any matter under [adjudication] adjudicative proceedings.

549 (b) Any member of the commission, administrative law judge, or commission employee
550 who receives an ex parte communication shall place the communication into the public record of
551 the proceedings and afford all parties an opportunity to comment on the information.

552 Section 21. Section **54-7-11.5** is enacted to read:

553 **54-7-11.5. Initial conferences.**

554 (1) (a) Before filing a request for agency action, a potential party or parties are encouraged

555 to confer with the commission and its staff concerning a contemplated request. The commission
556 shall hold an initial conference with the potential party or parties requesting the conference and
557 the commission may, in its discretion, invite other potential parties to participate in subsequent
558 conferences.

559 (b) Requests for conferences described in Subsection (1)(a):

560 (i) are not requests for agency action under Subsection 63-46b-3(b); and

561 (ii) do not require notice of the conferences.

562 (c) Commission and staff shall offer advice and assistance and, in accordance with Section
563 63-46b-1, seek to:

564 (i) encourage settlement;

565 (ii) clarify the issues;

566 (iii) simplify the evidence;

567 (iv) facilitate discovery; and

568 (v) expedite the proceedings.

569 (2) During the conferences described in Subsection (1), the commission and staff are
570 encouraged to seek resolution of the issues presented. If a resolution requiring commission action
571 is achieved, the commission shall:

572 (a) issue an initial order reflecting the resolution; and

573 (b) initiate an adjudicative proceeding in accordance with Subsection 63-46b-3(1)(a) to
574 implement the resolution.

575 (3) Nothing in this section precludes the initiation of an adjudicative proceeding by any
576 party requesting a conference before the commission issues an initial order.

577 (4) (a) When an adjudicative proceeding is commenced by anyone other than the Office
578 of the Public Advocate, the Office of the Public Advocate shall, except as provided in Subsections
579 (4)(c) and (d), before intervening in the proceeding:

580 (i) make a bonafide effort to confer with the party initiating the request; or

581 (ii) if the adjudicative proceeding is commenced by the commission, make a bonafide
582 effort to confer with the commission and any public utility directly affected by the commission
583 action.

584 (b) The Office of the Public Advocate is directed at the conference to:

585 (i) encourage settlement;

586 (ii) clarify the issues;

587 (iii) simplify the evidence;

588 (iv) facilitate discovery; and

589 (v) expedite the proceedings.

590 (c) In any proceeding where the commission is required by statute to issue tentative or final
591 orders in less than 30 days, the Office of the Public Advocate may intervene. If further
592 proceedings follow, the Office of the Public Advocate shall confer as provided in Subsections
593 (4)(a) and (b) as soon as practicable.

594 (d) If the commission has discretion, and intends, to issue a final or tentative order in less
595 than 30 days, the commission shall notify the Office of Public Advocate of its intention to issue
596 the order, and the Office of the Public Advocate may intervene. If further proceedings follow, the
597 Office of the Public Advocate shall confer as provided in Subsections (4)(a) and (b) as soon as
598 practicable.

599 Section 22. Section **54-7-12** is amended to read:

600 **54-7-12. Rate increase or decrease -- Procedure -- Effective dates -- Electrical or**
601 **telephone cooperative.**

602 (1) As used in this section:

603 (a) "Rate increase" means any direct increase in a rate, fare, toll, rental, or other charge of
604 a public utility or any modification of a classification, contract, practice, or rule that increases a
605 rate, fare, toll, rental, or other charge of a public utility.

606 (b) "Rate decrease" means any direct decrease in a rate, fare, toll, rental, or other charge
607 of a public utility or any modification of a classification, contract, practice, or rule that decreases
608 a rate, fare, toll, rental, or other charge of a public utility.

609 (2) (a) Any public utility or other party that proposes to increase or decrease rates shall file
610 appropriate schedules with the commission setting forth the proposed rate increase or decrease.

611 (b) The commission shall, after reasonable notice, hold a hearing to determine whether the
612 proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable.
613 If a rate decrease is proposed by a public utility, the commission may waive a hearing unless it
614 seeks to suspend, alter, or modify the rate decrease.

615 (c) Except as otherwise provided in Subsections (3) and (4), no proposed rate increase or
616 decrease is effective until after completion of the hearing and issuance of a final order by the

617 commission concerning the proposed increase or decrease.

618 (3) ~~(a)~~ [The following rules apply] This Subsection (3) applies to the implementation of
619 any proposed rate increase or decrease filed by a utility or proposed by any other party, or the
620 commission in an initial order under Section 54-7-11.5, and to the implementation of any other
621 increase or decrease in lieu of that proposed by a utility ~~[or],~~ other party ~~[that is determined to be~~
622 ~~just and reasonable by],~~ or the commission[:].

623 ~~[(a)]~~ (b) (i) On its own initiative or in response to an application by a public utility or other
624 party, the commission, after a hearing, may allow any proposed rate increase or decrease ~~[, or a]~~
625 which is just or reasonable, or a just and reasonable part of the rate increase or decrease, to take
626 effect, subject to the commission's right to order a refund or surcharge, upon the filing of the
627 utility's schedules or at any time during the pendency of its ~~[hearing proceedings]~~ adjudicative
628 proceeding.

629 (ii) The evidence presented in the hearing held pursuant to this Subsection ~~(3)(b)~~ need not
630 encompass all issues that may be considered in a rate case hearing held pursuant to Subsection
631 (2)(b), but shall establish an adequate prima facie showing that the interim rate increase or
632 decrease is justified.

633 ~~[(b)]~~ (c) (i) If the commission completes a hearing concerning a utility's revenue
634 requirement before the expiration of 240 days from the date the rate increase or decrease proposal
635 is filed, it may issue a final order within that period establishing the utility's revenue requirement
636 and fixing its interim allowable rates before it determines the allocation of the increase or decrease
637 among categories of customers and classes of service.

638 (ii) If the commission in its final order on a utility's revenue requirement finds that the
639 interim increase order under Subsection ~~(3)[(a)](b)~~ exceeds the increase finally ordered, it shall
640 order the utility to refund the excess to customers.

641 (iii) If the commission in its final order on a utility's revenue requirement finds that the
642 interim decrease order under Subsection ~~(3)[(a)](b)~~ exceeds the decrease finally ordered, it shall
643 order a surcharge to customers to recover the excess decrease.

644 ~~[(c)]~~ (d) If the commission fails to enter its order granting or revising a revenue increase
645 within 240 days after the ~~[utility's schedules are filed]~~ commencement of a request for a rate
646 increase by a public utility or an increase proposed by an initial order of the commission, the rate
647 increase proposed by the utility or the commission is final and the commission may not order a

648 refund of any amount already collected by the utility under its filed rate increase.

649 ~~[(d)]~~ (e) (i) ~~[When] If~~ a public utility files a proposed rate increase based upon an increased
650 cost to the utility for fuel ~~[or], energy, or related services~~ purchased or obtained from ~~[independent~~
651 ~~contractors, other independent suppliers, or any supplier whose prices are regulated by a~~
652 ~~governmental agency, the commission shall issue a tentative order with respect to the proposed~~
653 ~~increase within ten days after the proposal is filed, unless it issues a final order with respect to the~~
654 ~~rate increase within 20 days after the proposal is filed]~~ an independent contractor or independent
655 source of supply or any supplier whose prices are regulated by a governmental agency, the
656 requested increase shall take effect ten days after the filing of the request with the commission or
657 at any earlier time after the filing of the request as the commission may by order permit.

658 (ii) The commission shall ~~[hold a public hearing within 30 days after it issues the tentative~~
659 ~~order to determine if the proposed rate increase is just and reasonable]~~ order the increase to take
660 effect only after a showing has been made by the public utility to the commission that the increase
661 is justified.

662 (iii) The commission may, after a hearing, suspend, alter, or modify the increase.

663 (iv) The commission is not precluded from otherwise using mechanisms, such as a
664 pass-through account or energy-balancing account, for the recovery by a public utility of an
665 increased cost for fuel or energy purchased, or other cost or expense items, but the procedural
666 mechanisms for expedited orders described in Subsections (3)(e)(i) through (iii) do not apply.

667 (4) (a) Notwithstanding ~~[any other provisions of this title]~~ Subsection (3), any schedule,
668 classification, practice, or rule filed by a public utility with the commission that does not result in
669 any rate increase shall take effect 30 days after the date of filing or within any lesser time the
670 commission may grant, subject to its authority after a hearing to suspend, alter, or modify that
671 schedule, classification, practice, or rule.

672 (b) ~~[When] If~~ the commission suspends a schedule, classification, practice, or rule, it shall
673 hold a hearing on the schedule, classification, practice, or rule before issuing its final order.

674 (c) For purposes of this Subsection (4), any schedule, classification, practice, or rule that
675 introduces a service or product not previously offered may not result in a rate increase.

676 (5) ~~[(a)]~~ Notwithstanding ~~[any other provision of this title, whenever a public utility files~~
677 ~~with the commission any]~~ Subsections (2) through (4), any rate or price change or any change to
678 a schedule, classification, practice, or rule [that does not result in an increase in any rate, fare, toll,

679 ~~rental, or charge, the schedule, classification, practice, or rule shall take effect 30 days after the~~
 680 ~~date of filing or at any earlier time the commission may grant, subject to the authority of the~~
 681 ~~commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice, or~~
 682 ~~rule.] determined by initial order under Section 54-7-11.5 may be adopted by the commission as~~
 683 ~~its final order without a hearing if:~~

684 ~~[(b) (i) Notwithstanding any other provision of this title, whenever a public utility files~~
 685 ~~with the commission a request for an increase in rates, fares, tolls, rentals, or charges based solely~~
 686 ~~upon cost increases to the public utility of fuel supplied by an independent contractor or~~
 687 ~~independent source of supply, the requested increase shall take effect ten days after the filing of~~
 688 ~~the request with the commission or at any earlier time after the filing of the request as the~~
 689 ~~commission may by order permit.]~~

690 ~~[(ii) The commission shall order the increase to take effect only after a showing has been~~
 691 ~~made by the public utility to the commission that the increase is justified.]~~

692 ~~[(iii) The commission may, after a hearing, suspend, alter, or modify the increase.]~~

693 ~~(a) the commission mails notice of its initial order to each person who has requested notice~~
 694 ~~of the initial orders and the commission provides other notice it considers appropriate; and~~

695 ~~(b) there is no objection to the initial order within 20 days from the service of notice.~~

696 ~~(6) Any person receiving notice under Subsection (5)(a) who has not objected to the~~
 697 ~~commission's order under Subsection (5)(b) may not seek judicial review of the commission's~~
 698 ~~order under Title 63, Chapter 46b, Administrative Procedures Act.~~

699 ~~(7) To the extent that time frames provided for the issuance of orders or for the effective~~
 700 ~~date of schedules, classifications, practices, rules, or rate increases in Subsections (2) through (5)~~
 701 ~~are inconsistent with any otherwise applicable time frames under Title 63, Chapter 46b,~~
 702 ~~Administrative Procedures Act, the time frames provided in Subsections (2) through (5) shall~~
 703 ~~supercede the time frames provided in Title 63, Chapter 46b, Administrative Procedures Act.~~

704 ~~[(6)] ~~(8) (a) This section does not apply to any rate changes of an electrical or telephone~~~~
 705 ~~cooperative that meets [all of] the [following] requirements[:] of Subsections (8)(b) through (e).~~

706 ~~[(a)] ~~(b) The cooperative is organized for the purpose of either distributing electricity or~~~~
 707 ~~providing telecommunication services to its members and the public at cost. "At cost" includes~~
 708 ~~interest costs and a reasonable rate of return as determined by the cooperative's board of directors.~~

709 ~~[(b)] ~~(c) The cooperative's board of directors and any appropriate agency of the federal~~~~

710 government have approved the rate increase or other rate change and all necessary tariff revisions
711 reflecting the increased rate or rate change.

712 ~~[(c)]~~ (d) Before implementing any rate increases, the cooperative has held a public meeting
713 for all its customers and members. The cooperative shall mail a notice of the meeting to all of
714 the cooperative's customers and members not less than ten days prior to the date that the meeting
715 is held.

716 ~~[(d)]~~ (e) The cooperative has filed its tariff revisions reflecting the rate increase or other
717 rate change with the commission, who shall make the tariffs available for public inspection.

718 ~~[(7)]~~ (9) Procedures for the implementation of a proposed rate increase by a telephone
719 corporation having less than 5,000 subscriber access lines are as follows:

720 (a) (i) The proposed rate increase may become effective upon the filing of the proposed
721 tariff revisions and necessary information to support a determination by the commission that the
722 proposed rate increase is just and reasonable.

723 (ii) The telephone corporation shall provide 30 days' notice to the commission and all
724 potentially affected access line subscribers of the proposed rate increase.

725 (b) (i) The commission may investigate whether the proposed rate increase is just and
726 reasonable.

727 (ii) If the commission determines, after notice and hearing, that the rate increase is unjust
728 or unreasonable in whole or in part, the commission may establish the rates, charges, or
729 classifications that it finds to be just and reasonable.

730 (c) The commission shall investigate and hold a hearing to determine whether any
731 proposed rate increase is just and reasonable if 10% or more of the telephone corporation's
732 potentially affected access line subscribers file a request for agency action requesting an
733 investigation and hearing.

734 Section 23. Section **54-7-15** is amended to read:

735 **54-7-15. Review or rehearing by commission -- Application -- Procedure --**

736 **Prerequisite to court action -- Effect of commission decisions.**

737 (1) Before seeking judicial review of the commission's action, any party, stockholder,
738 bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an
739 order of the commission shall meet the requirements of this section.

740 (2) (a) After any order or decision, except an initial order and decision issued pursuant to

741 Section 54-7-11.5, has been made by the commission, any party to the action or proceeding, or any
742 stockholder [or], bondholder, or other party pecuniarily interested in the public utility affected may
743 apply for rehearing of any [matters] matters determined in the action or proceeding.

744 (b) No applicant may urge or rely on any ground not set forth in the application in an
745 appeal to any court.

746 (c) Any application for rehearing not granted by the commission within 20 days is denied.

747 (d) (i) If the commission grants any application for rehearing without suspending the order
748 involved, the commission shall issue its decision on rehearing within 20 days after final
749 submission.

750 (ii) If the commission fails to render its decision on rehearing within 20 days, the order
751 involved is affirmed.

752 (e) Unless an order of the commission directs that an order is stayed or postponed, an
753 application for review or rehearing does not excuse any corporation or person from complying with
754 and obeying any order or decision of the commission.

755 (3) Any order or decision on rehearing that abrogates, changes, or modifies an original
756 order or decision has the same force and effect as an original order or decision, but does not affect
757 any right, or the enforcement of any right, arising from the original order or decision unless so
758 ordered by the commission.

759 (4) Any order of the commission, including decisions on rehearing, shall have binding
760 force and effect only with respect to public utilities that were actual parties to the proceeding, and
761 do not determine any rights, privileges, obligations, duties, constraints, burdens, or responsibilities
762 with respect to public utilities that were not party to the proceeding in which the order or decision
763 was rendered unless the commission enacts a rule in compliance with Section 63-46a-3 that
764 incorporates the principles of law not already in its rules that are established by the proceeding.

765 Section 24. Section **54-8b-13** is amended to read:

766 **54-8b-13. Rules governing operator assisted services.**

767 (1) The commission shall make rules to implement the following requirements pertaining
768 to the provision of operator assisted services:

769 (a) Rates, surcharges, terms, or conditions for operator assisted services shall be provided
770 to customers upon request without charge.

771 (b) A customer shall be made aware, prior to incurring any charges, of the identity of the

772 operator service provider handling the operator assisted call by a form of signage placed on or near
773 the telephone or by verbal identification by the operator service provider.

774 (c) Any contract between an operator service provider and an aggregator shall contain
775 language which assures that any person making a telephone call on any telephone owned or
776 controlled by the aggregator or operator service provider can access:

777 (i) where technically feasible, any other operator service provider operating in the relevant
778 geographic area; and

779 (ii) the public safety emergency telephone numbers for the jurisdiction where the
780 aggregator's telephone service is geographically located.

781 (d) No operator service provider shall transfer a call to another operator service provider
782 unless that transfer is accomplished at, and billed from, the call's place of origin. If such a transfer
783 is not technically possible, the operator service provider shall inform the caller that the call cannot
784 be transferred as requested and that the caller should hang up and attempt to reach another operator
785 service provider through the means provided by that other operator service provider.

786 (2) (a) The [~~Division of Public Utilities~~] Office of the Public Advocate shall be responsible
787 for enforcing any rule adopted by the commission under this section.

788 (b) If the [~~Division of Public Utilities~~] Office of the Public Advocate determines that any
789 person, or any officer or employee of any person, is violating any rule adopted under this section,
790 the [division] Office of the Public Advocate shall serve written notice upon the alleged violator
791 which:

792 (i) specifies the violation;

793 (ii) alleges the facts constituting the violation; and

794 (iii) specifies the corrective action to be taken.

795 (c) After serving notice as required in Subsection (2)(b), the [division] Office of the Public
796 Advocate may request the commission to issue an order to show cause. After a hearing, the
797 commission may impose penalties and, if necessary, may request the attorney general to enforce
798 the order in district court.

799 (3) (a) Any person who violates any rule made under this section or fails to comply with
800 any order issued pursuant to this section is subject to a penalty not to exceed \$2,000 per violation.

801 (b) In the case of a continuing violation, each day that the violation continues constitutes
802 a separate and distinct offense.

803 (4) A penalty assessment under this section does not relieve the person assessed from civil
804 liability for claims arising out of any act which was a violation of any rule under this section.

805 Section 25. Section **54-8b-17** is amended to read:

806 **54-8b-17. Procedures for enforcement of interconnection service quality -- Penalties**
807 **for violation -- Funds collected.**

808 (1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance with
809 the following procedure:

810 (a) The complaint shall be served upon the defendant telecommunications corporation and
811 filed with the commission. A copy of the complaint shall also be served upon the [~~Division of~~
812 ~~Public Utilities~~] Office of the Public Advocate.

813 (b) An answer or other responsive pleading to the complaint shall be filed with the
814 commission not more than ten days after receipt of service of the complaint. Copies of the answer
815 or responsive pleading shall be served on the complainant and the [~~Division of Public Utilities~~]
816 Office of the Public Advocate.

817 (c) A prehearing conference shall be held not later than ten days after the complaint is
818 filed.

819 (d) (i) The commission shall commence a hearing on the complaint not later than 25 days
820 after the complaint is filed, unless the commission finds that extraordinary conditions exist that
821 warrant postponing the hearing date, in which case the commission shall commence the hearing
822 as soon as practicable.

823 (ii) Parties shall be entitled to present evidence as provided by the commission's rules.

824 (e) The commission shall take final action on a complaint not more than 45 days after the
825 complaint is filed unless:

826 (i) the commission finds that extraordinary conditions exist that warrant extending final
827 action, in which case the commission shall take final action as soon as practicable; or

828 (ii) the parties agree to an extension of final action by the commission.

829 (2) The commission shall have the enforcement powers listed in Subsection (3) if, in the
830 proceeding, the commission finds that:

831 (a) the telecommunications corporation has violated the terms of the commission's
832 interconnection service quality rules;

833 (b) the telecommunications corporation has breached its obligations under the provisions

834 of the Federal Telecommunications Act;

835 (c) either party to an approved interconnection agreement has violated the terms of the
836 agreement; or

837 (d) either party has violated the terms of a statement of generally available terms.

838 (3) If the commission makes any of the findings described in Subsection (2), the
839 commission shall:

840 (a) order the telecommunications corporation to:

841 (i) remedy the violation; and

842 (ii) comply, as applicable, with the terms of the commission's interconnection service
843 quality rules, the interconnection agreement, or statement of generally available terms;

844 (b) if considered appropriate by the commission, prescribe the specific actions that the
845 telecommunications corporation must take to remedy its violation, including a time frame for
846 compliance and the submission of a plan to prevent future violations;

847 (c) if considered appropriate by the commission, impose a penalty on the defendant
848 telecommunications corporation subject to the following:

849 (i) if the violation is of the duties imposed under Section 54-8b-2.2 or 54-8b-16, the
850 commission may impose a penalty for such violation as provided in Section 54-7-25; or

851 (ii) if the violating telecommunications corporation is other than an incumbent telephone
852 corporation with fewer than 50,000 access lines in this state, and the violation is of a duty imposed
853 under an interconnection agreement, a statement of generally available terms, or the obligations
854 of Section 251 of the Federal Telecommunications Act, the commission may impose a penalty
855 subject to the following:

856 (A) if the commission finds that the violation was willful or intentional, the penalty may
857 be in an amount of up to \$5,000 per day and the period for which the penalty is levied shall
858 commence on the date the commission finds the violation to have first occurred through and
859 including the date the violation is corrected; or

860 (B) if the commission finds that the violation was not willful or intentional, the penalty
861 may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is levied
862 shall commence on the day after the deadline for compliance in the commission's order.

863 (4) (a) The commission shall have the authority, on its own or at the request of the injured
864 telecommunications corporation, to investigate a party's compliance with the commission's order

865 under Subsection (3)(c)(ii).

866 (b) If corrective or remedial action acceptable to the commission is not completed:

867 (i) 45 days after the deadline set by the commission, the commission may increase the
868 penalty up to \$10,000 per violation per day for a willful or intentional violation; or

869 (ii) 90 days after the deadline set by the commission, the commission may increase the
870 penalty up to \$4,000 per violation per day for a violation that is not willful or intentional.

871 (5) (a) The penalty under Subsection (3)(c) shall be in addition to, and not in lieu of, civil
872 damages or other remedies that may be available to the injured party.

873 (b) In determining the amount of the penalty or the amount agreed to in compromise, the
874 commission shall consider:

875 (i) the appropriateness of the penalty to the size of the violating party;

876 (ii) the gravity of the violation;

877 (iii) the good faith of the defendant telecommunications corporation in attempting to
878 achieve compliance after notification of the violation;

879 (iv) the impact of the violation to the establishment of competition; and

880 (v) the actual economic harm incurred by the plaintiff telecommunications corporation.

881 (c) Each day of a continuing violation or a failure to comply is a separate offense for
882 purposes of levying a penalty under this section.

883 (6) All funds collected under this section shall go into the Universal Public
884 Telecommunications Service Support Fund established under Section 54-8b-15, and shall be in
885 addition to any contributions required of a telecommunications corporation under that section.

886 Section 26. Section **54-8b-18** is amended to read:

887 **54-8b-18. Definitions -- Unauthorized change of telecommunications provider --**
888 **Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.**

889 (1) For purposes of this section:

890 (a) "Agents" includes any person, firm, or corporation representing a telecommunications
891 corporation for purposes of requesting a change in a subscriber's telecommunications provider, but
892 does not include a local service provider when executing a request submitted by another service
893 provider or its agents.

894 (b) "Freeze" means a directive from a subscriber to retain the provider of public
895 telecommunications services selected by the subscriber until the subscriber provides authorization

896 for a change to another provider of public telecommunications services through any means by
897 which a freeze is implemented.

898 (c) "Small commercial subscriber" is a person or entity conducting a business, agriculture,
899 or other enterprise in the state having less than five telecommunications lines.

900 (d) "Subscriber" means a corporation, person, or government, or a person acting legally
901 on behalf of a corporation, person, or government who has purchased public telecommunications
902 services from a telecommunications corporation.

903 (2) No telecommunications corporation or its agents shall make any change or authorize
904 a different telecommunications corporation to make any change in the provider of any public
905 telecommunications service to a subscriber unless it complies, at a minimum, with Subsections
906 (2)(a) through (e). This Subsection (2) does not apply to a telecommunications corporation that
907 effectuates a change in service provider pursuant to a change authorization submitted or requested
908 by another telecommunications corporation.

909 (a) The telecommunications corporation or its agents shall, at a minimum, inform the
910 subscriber of the nature, extent, and rates of the service being offered and any charges associated
911 with the change.

912 (b) Notwithstanding Section 13-26-4, changes in provider of telecommunication service
913 accomplished through telephone solicitation shall comply with the Telephone Fraud Prevention
914 Act, Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11.

915 (c) For sales of residential service or small commercial subscriber service, the
916 telecommunications corporation or its agents shall confirm that the subscriber is aware of any
917 charges that the subscriber must pay associated with the change and that the subscriber authorizes
918 the change of provider. The subscriber's authorization to change the provider shall be confirmed
919 by any one of the following methods:

920 (i) obtaining the subscriber's written authorization;

921 (ii) having the subscriber's oral authorization verified by an independent third party; or

922 (iii) any means provided by rule of the Federal Communications Commission or the
923 commission.

924 (d) If the subscriber is not an individual, an authorization shall be valid only if given by
925 an authorized representative of the subscriber.

926 (e) (i) The written authorization to change the provider shall be signed by the subscriber

927 and shall contain a clear, conspicuous, and unequivocal request by the subscriber for a change of
928 telecommunications provider.

929 (ii) A written authorization is not valid if it is presented to the subscriber for signature in
930 connection with a sweepstakes, game of chance, or any other means prohibited by commission
931 rule.

932 (iii) Nothing in this section shall be construed to prohibit any person from offering a
933 premium, incentive, or a thing of value to another as consideration for authorizing a change of
934 telecommunications service provider, provided that no element of chance or skill is associated with
935 the offer of the premium, incentive, or thing of value or its receipt.

936 (3) The confirmation by a third-party verifier shall, at a minimum:

937 (a) confirm the subscriber's identity with information unique to the customer, unless the
938 customer refuses to provide identifying information, then that fact shall be noted;

939 (b) confirm that the subscriber agrees to the requested change in telecommunications
940 service providers; and

941 (c) confirm that the subscriber has the authority to select the provider as the provider of
942 that service.

943 (4) A third-party verifier shall meet each of the following criteria:

944 (a) any criteria for third-party verifiers set by the Federal Communications Commission;

945 (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:

946 (i) by the telecommunications corporation or its agents that seek to provide the
947 telecommunications service or by any corporation, firm, or person who directly or indirectly
948 manages, controls, directs, or owns more than 5% of the telecommunications corporation; or

949 (ii) by the marketing entity that seeks to market the telecommunications service or by any
950 corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more
951 than 5% of the marketing entity;

952 (c) operate from facilities physically separated from:

953 (i) those of the telecommunications corporation or its agents that seek to provide the
954 subscriber's telecommunications service; or

955 (ii) those of the marketing entity that seeks to market a telecommunications service to the
956 subscriber; and

957 (d) not derive commissions or compensation based upon the number of change

958 authorizations verified.

959 (5) A telecommunications corporation or its agents seeking to verify the change
960 authorization shall connect the subscriber to the third-party verifier or arrange for the third-party
961 verifier to call the subscriber to verify the change authorization.

962 (6) A third-party verifier that obtains the subscriber's oral verification regarding the change
963 shall record that verification by obtaining appropriate verification data.

964 (7) (a) The record verifying a subscriber's change of provider shall be available to the
965 subscriber upon request.

966 (b) Information obtained from the subscriber through verification may not be used for any
967 other purpose.

968 (c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds
969 for penalties or other action by the commission or remedies provided by law to the aggrieved
970 subscriber against the telecommunications corporation, third-party verifier, their agents, or their
971 employees who are responsible for the violation.

972 (8) The third-party verification shall occur in the same language as that in which the
973 change was solicited.

974 (9) The verification requirements described in this section shall apply to all changes in the
975 provider of any public telecommunications service.

976 (10) The commission may promulgate rules:

977 (a) necessary to implement this section;

978 (b) consistent with any rules promulgated by the Federal Communications Commission;

979 and

980 (c) in a nondiscriminatory and competitively neutral manner.

981 (11) (a) Each subscriber may elect to require the telecommunications corporation
982 providing the subscriber's local exchange service to implement a freeze until the subscriber
983 provides authorization for a change to another provider of public telecommunications services.

984 (b) Once a subscriber has elected the freeze option under Subsection (11)(a), the
985 telecommunications corporation providing the subscriber's local exchange service may not process
986 a request to change the subscriber to another provider of telecommunications services without
987 prior authorization directly from the subscriber.

988 (12) (a) Whenever the subscriber's provider of a telecommunications service changes, the

989 new provider shall:

990 (i) retain a record of the verified change authorization consistent with requirements of the
991 Federal Communications Commission or rules issued by the commission; and

992 (ii) be responsible for providing a conspicuous notice of the change within 30 days of the
993 effective date of the change of service.

994 (b) At a minimum, the notice in Subsection (12)(a)(ii) shall identify the new provider,
995 contain a general description of the service and price, and provide information necessary for the
996 subscriber to have questions answered or to rescind the change.

997 (13) Any bill shall identify each telecommunications service provider of
998 telecommunication service for which billing is rendered.

999 (14) (a) Any person or provider of telecommunications service inadvertently or knowingly
1000 designating or changing the subscriber's telecommunications service provider in violation of this
1001 section shall refund to the subscriber any amounts required by the rules of the Federal
1002 Communications Commission and the commission.

1003 (b) The unauthorized provider in Subsection (14)(a) additionally shall:

1004 (i) bear all costs of restoring the customer to the service of the subscriber's original service
1005 provider; and

1006 (ii) pay to any other telecommunications provider any fees set by the commission for the
1007 designation or change.

1008 (15) Proceedings for violations of this section may be commenced by request for agency
1009 action filed with the commission by a subscriber, a telecommunications corporation, the [~~Division~~
1010 ~~of Public Utilities~~] Office of the Public Advocate, or by the commission on its own motion.

1011 (16) Any telecommunications corporation, its agents, or a third-party verifier who violates
1012 this section or rules adopted to implement this section shall be subject to the provisions of Sections
1013 54-7-23 through 54-7-29.

1014 (17) The commission is granted authority to enforce provisions relating to an unauthorized
1015 telecommunication service provider change in interstate and intrastate telecommunication service
1016 involving telecommunications corporations operating in the state.

1017 Section 27. Section **54-10a-1** is enacted to read:

1018 **CHAPTER 10a. OFFICE OF THE PUBLIC ADVOCATE**

1019 **54-10a-1. Establishment of Office of the Public Advocate -- Functions.**

- 1020 (1) There is established within the Department of Commerce the Office of the Public
1021 Advocate which may:
- 1022 (a) initiate and participate in initial conferences pursuant to Section 54-7-11.5, commence
1023 original proceedings, file complaints, appear as a party, present factual information and evidence,
1024 examine witnesses, advocate policy recommendations, commence appeals, otherwise participate
1025 in proceedings before the commission, and engage in all other activities consistent with its
1026 statutory responsibilities;
- 1027 (b) commence original proceedings, file complaints, appear as a party, appeal, and
1028 otherwise represent the public interest in matters and proceedings involving regulation of a public
1029 utility pending before any officer, department, board, agency, commission, governmental authority,
1030 or court of Utah, of another state, or of the United States, and may intervene in, protest, resist, or
1031 advocate the granting, denial, or modification of any petition, application, complaint, or other
1032 proceeding, or any decision or order of any of those governmental authorities;
- 1033 (c) investigate or study, upon complaint, upon order of the commission, or upon its own
1034 initiative, any matter within the jurisdiction of the commission;
- 1035 (d) conduct audits and inspections, or take enforcement actions regarding any matter
1036 within the jurisdiction of the commission in order to insure compliance with decisions, orders, and
1037 policies of the commission, either upon order of the commission or upon its own initiative;
- 1038 (e) require any person or entity subject to the jurisdiction of the commission to:
- 1039 (i) provide information, reports, and other data compilations relevant to matters within the
1040 jurisdiction of the commission;
- 1041 (ii) provide access to inspect and copy records and other data compilations relevant to
1042 matters within the jurisdiction of the commission;
- 1043 (iii) permit inspection of properties and tangible things used in providing public utility
1044 service; and
- 1045 (iv) engage in other methods of discovery authorized by the commission;
- 1046 (f) review applications filed with the commission and present recommendations to the
1047 commission on the disposition of those applications;
- 1048 (g) make recommendations regarding public utility regulatory policy and long-range
1049 planning on matters within the jurisdiction of the commission;
- 1050 (h) promote balanced and objective representative of all interests in any given matter and

1051 not advocate for or on behalf of any individual, organization, or entity;

1052 (i) assess the impact of utility rate changes and other regulatory actions;

1053 (j) assist residential consumers, agricultural consumers, and those engaged in small
1054 commercial enterprises in appearing before the commission; and

1055 (k) engage in settlement negotiations and make stipulations or agreements regarding
1056 matters within the jurisdiction of the commission.

1057 (2) (a) Any investigations, studies, audits, inspections, enforcement actions, or requests
1058 for discovery of information pursuant to Subsection (1)(c), (d), or (e), shall be preceded by
1059 reasonable advance notice to the person or entity against whom investigation, study, audit,
1060 inspection, enforcement, or discovery is sought.

1061 (b) The targeted person or entity may require that a complaint or an adjudicative
1062 proceeding be instituted with the commission prior to the commencement of the investigation,
1063 study, audit, inspection, enforcement, or discovery by the Office of the Public Advocate pursuant
1064 to Subsection (1)(c), (d), or (e).

1065 Section 28. Section **54-10a-2** is enacted to read:

1066 **54-10a-2. Director of Office of the Public Advocate -- Appointment -- Authority and**
1067 **responsibility.**

1068 (1) The director of the Office of the Public Advocate shall be appointed by the executive
1069 director of the Department of Commerce and shall serve at the pleasure of the executive director.

1070 (2) The director of the Office of the Public Advocate is subject to the administrative
1071 authority of the executive director of the Department of Commerce and is responsible for the
1072 administration and supervision of the division.

1073 (3) The director of the Office of the Public Advocate shall have authority to adopt internal
1074 organizational measures to effectuate efficiency and economy in the management and operation
1075 of the Office of the Public Advocate.

1076 Section 29. Section **54-10a-3** is enacted to read:

1077 **54-10a-3. Budget of Office of the Public Advocate -- Employment of personnel.**

1078 (1) The annual budget of the Office of the Public Advocate shall provide sufficient funds
1079 for the Office of the Public Advocate to hire, develop, and organize a technical and professional
1080 staff to perform the duties, powers, and responsibilities committed to it by statute.

1081 (2) The director of the Office of the Public Advocate may:

1082 (a) hire economists, accountants, engineers, inspectors, statisticians, and other technical
1083 and professional experts as may be required;

1084 (b) retain additional experts as required for a particular matter, but only to the extent that
1085 it is necessary to supplement staff of the Office of the Public Advocate in order to fulfill its duties;
1086 and

1087 (c) employ necessary administrative and support staff.

1088 (3) (a) The Department of Human Resource Management shall determine pay schedules
1089 using standard techniques for determining compensation.

1090 (b) The Department of Human Resource Management may make its compensation
1091 determinations based upon compensation common to utility companies throughout the United
1092 States.

1093 Section 30. Section **54-10a-4** is enacted to read:

1094 **54-10a-4. Legal counsel.**

1095 The attorney general shall appoint legal counsel to the Office of the Public Advocate upon
1096 request.

1097 Section 31. Section **54-10a-5** is enacted to read:

1098 **54-10a-5. Interests, relationships, and actions by employees prohibited.**

1099 No employee of the Office of the Public Advocate shall, while so employed:

1100 (1) have any direct pecuniary interest, whether as the holder of stock or other securities,
1101 or otherwise have any conflict of interest with any public utility or other entity subject to the
1102 jurisdiction of the commission;

1103 (2) have any office, position, or relationship, or be engaged in any business or avocation
1104 which interferes or is incompatible with the effective and objective fulfillment of the duties of
1105 office or employment with the Office of the Public Advocate;

1106 (3) accept any gift, gratuity, emolument, or employment in violation of Title 67, Chapter
1107 16, Utah Public Officers' and Employees' Ethics Act, from any public utility or any other entity
1108 subject to the jurisdiction of the commission or from any officer, agent, or employee thereof; or

1109 (4) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any
1110 person or entity to any office or employment with any public utility or other entity subject to the
1111 jurisdiction of the commission.

1112 Section 32. Section **54-10a-6** is enacted to read:

1113 **54-10a-6. Objectives.**

1114 In the performance of the duties, powers, and responsibilities under this title, the Office of
1115 the Public Advocate shall provide the commission with objective and comprehensive information,
1116 evidence, and recommendations after balancing the interests of consumers and the public entity
1117 as prescribed in Section 54-1-1.

1118 Section 33. Section **54-10a-7** is enacted to read:

1119 **54-10a-7. Notice by commission.**

1120 The commission shall automatically provide notice to the Office of the Public Advocate
1121 of all requests for agency action or notices of agency action.

1122 Section 34. Section **54-10a-8** is enacted to read:

1123 **54-10a-8. Establishment of advisory board.**

1124 (1) There is established an advisory board for the Office of the Public Advocate.

1125 (2) (a) The advisory board shall consist of seven members, six of which shall be appointed
1126 by the governor to represent the following interests, as follows:

1127 (i) large industrial users of public utility services;

1128 (ii) small industrial or commercial users of public utility services;

1129 (iii) agricultural users of public utility services;

1130 (iv) residential public utility consumers;

1131 (v) low-income residents; and

1132 (vi) retired persons.

1133 (b) The seventh member shall be the executive director of the Department of Commerce
1134 who shall serve as chair of the advisory board.

1135 (c) All members of the advisory board shall maintain their principal abode within Utah.

1136 (3) (a) Except as required by Subsection (3)(b), as terms of current advisory board
1137 members expire, the governor shall appoint each new member or reappointed member to a
1138 four-year term.

1139 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time
1140 of appointment or reappointment, adjust the length of terms to ensure that the terms of advisory
1141 board members are staggered so that approximately half of the advisory board is appointed every
1142 two years.

1143 (c) When a vacancy occurs in the membership for any reason, the replacement shall be

1144 appointed for the unexpired term.

1145 (4) No more than three members of the advisory board shall be from the same political
 1146 party.

1147 (5) (a) Members of the advisory board shall receive no compensation or benefits for their
 1148 services, but may receive per diem and expenses incurred in the performance of the member's
 1149 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and
 1150 63A-3-107.

1151 (b) Members may decline to receive per diem and expenses for their service.

1152 (6) The advisory board may:

1153 (a) hold meetings at such times and places as the chair may determine; and

1154 (b) advise the office in the performance of the office's duties, powers, and responsibilities
 1155 consistent with Subsection 54-1-1(2).

1156 Section 35. Section **67-1-13** is amended to read:

1157 **67-1-13. Rural Telecommunications Task Force -- Creation -- Membership --**

1158 **Quorum -- Compensation -- Staff -- Duties -- Reports and recommendations.**

1159 (1) There is created within the governor's office the Rural Telecommunications Task Force
 1160 consisting of the following [~~11~~] ten members:

1161 (a) one representative from state government appointed by the governor who shall serve
 1162 as chair;

1163 (b) one member of the Senate appointed by the president of the Senate;

1164 (c) one member of the House of Representatives appointed by the speaker of the House
 1165 of Representatives;

1166 (d) the chair of the Public Service Commission or the chair's designee;

1167 [~~(e) the administrative secretary of the Committee of Consumer Services or the~~
 1168 ~~administrative secretary's designee;~~]

1169 [~~(f) the director of the [Division of Public Utilities or] Office of the Public Advocate~~
 1170 and the director's designee;

1171 [~~(g) (f) two representatives from a local government organization in rural Utah, one~~
 1172 representing cities and one representing counties, appointed by the governor; and

1173 [~~(h) (g) three representatives from telecommunications providers in rural Utah to be~~
 1174 appointed by the governor.

1175 (2) A majority of the members of the task force constitute a quorum. The action of a
1176 majority of a quorum constitutes the action of the task force.

1177 (3) (a) Salaries and expenses of the members of the task force who are legislators shall be
1178 paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

1179 (b) Members of the task force who are not legislators may not receive compensation for
1180 their work associated with the task force, but may receive per diem and expenses incurred as a
1181 member of the task force at the rates established by the Division of Finance under Sections
1182 63A-3-106 and 63A-3-107.

1183 (4) The governor's office shall provide staff support to the task force.

1184 (5) The task force shall review and make recommendations on the following issues:

1185 (a) identify appropriate eligibility criteria for Universal Service Fund Support for capital
1186 investment in broadband data services in rural areas of the state so that:

1187 (i) such support is limited to areas lacking those services;

1188 (ii) an appropriate fund balance is maintained;

1189 (iii) such support begins January 1, 2000; and

1190 (iv) increases in surcharges to support the fund are minimal;

1191 (b) identify areas of the state where state government should assume liability for the costs
1192 of relocating facilities in the case of right-of-way realignments in order to encourage deployment
1193 of digital infrastructure to those areas; and

1194 (c) other possible solutions to aid in the deployment of advanced telecommunications
1195 services in rural areas of the state.

1196 (6) The task force shall provide:

1197 (a) recommendations on rule changes to the Public Service Commission by October 1,
1198 1999; and

1199 (b) a report, including any proposed legislation, to the Public Utilities and Technology
1200 Interim Committee before November 30, 1999.

1201 **Section 36. Repealer.**

1202 This act repeals:

1203 Section **54-4-1.5, Investigations, providing information, audits and recommendations**
1204 **by director.**

1205 Section **54-4a-1, Establishment of division -- Functions.**

- 1206 Section **54-4a-2, Director of division -- Appointment -- Authority and responsibility.**
- 1207 Section **54-4a-3, Budget of division -- Employment of personnel.**
- 1208 Section **54-4a-4, Legal counsel.**
- 1209 Section **54-4a-5, Interests, relationships and actions by employees prohibited.**
- 1210 Section **54-4a-6, Objectives.**
- 1211 Section **54-5-1.5, Special regulation fee -- Supplemental Levy Committee --**
- 1212 **Supplemental fee.**
- 1213 Section **54-5-2, How gross operating revenue is determined.**
- 1214 Section **54-5-3, Default in payment of fee -- Procedure to collect -- Penalties.**
- 1215 Section **54-5-4, Penalties.**
- 1216 Section **54-8b-12, Trust fund established -- Requirements -- Expiration -- Transfer of**
- 1217 **balance.**
- 1218 Section **54-10-1, Definitions.**
- 1219 Section **54-10-2, Committee of Consumer Services created -- Members -- Terms --**
- 1220 **Qualifications -- Appointment -- Organization.**
- 1221 Section **54-10-3, Per diem and expenses of members -- Meetings.**
- 1222 Section **54-10-4, Duties and responsibilities of committee.**
- 1223 Section **54-10-4.5, Representation of electric power utility by committee prohibited.**
- 1224 Section **54-10-5, Residential and small commercial representative -- Duties.**
- 1225 Section **54-10-6, Review of public utility accounting procedures and expenditures.**
- 1226 Section **54-10-7, Attorney from attorney general's office to represent committee.**
- 1227 Section 37. **Effective date.**
- 1228 This act takes effect on July 1, 2000.
- 1229 Section 38. **Transition clause.**
- 1230 (1) Effective July 1, 2000, the Office of the Public Advocate shall assume all rights, duties,
- 1231 and powers of the former Division of Public Utilities and the Committee of Consumer Services
- 1232 with respect to actions filed prior to July 1, 2000.
- 1233 (2) In order to avoid a conflict with its duties under Section 54-1-1, in proceedings
- 1234 commenced prior to July 2000, the Office of the Public Advocate shall retain the services of any
- 1235 person or entity to represent the public interests in those actions until completed.

Legislative Review Note

as of 2-15-00 8:48 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel