

LEGISLATIVE BILL 790

Approved by the Governor May 30, 2003

Introduced by Landis, 46; Hartnett, 45

AN ACT relating to natural gas; to amend sections 75-102, 75-110.01, 75-112, 75-118, 75-129, 75-131, and 75-132, Reissue Revised Statutes of Nebraska, and sections 57-705, 59-1617, 75-101, 75-109, 75-109.01, 75-122.01, 75-128, 75-139.01, 75-156, and 84-612, Revised Statutes Supplement, 2002; to adopt the State Natural Gas Regulation Act; to repeal the Municipal Natural Gas Regulation Act; to create and eliminate funds; to provide powers and duties for the Public Service Commission; to harmonize provisions; to provide severability; to repeal the original sections; to outright repeal sections 19-4601 to 19-4616 and 19-4618 to 19-4623, Reissue Revised Statutes of Nebraska, and section 19-4617, Revised Statutes Supplement, 2002; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 57 of this act shall be known and may be cited as the State Natural Gas Regulation Act.

Sec. 2. For purposes of the State Natural Gas Regulation Act:

(1) Agricultural ratepayer means a ratepayer whose usage of natural gas does not qualify the ratepayer as a high-volume ratepayer and (a) whose principal use of natural gas is for agricultural crop or livestock production, irrigation pumping, crop drying, or animal feed or food production or (b) whose service is provided on an interruptible basis;

(2) BTU means the amount of energy necessary to raise the temperature of one pound of water one degree Fahrenheit;

(3) City means any city or village in the State of Nebraska;

(4) Commission means the Public Service Commission;

(5) Gas gathering system means a natural gas pipeline system used primarily for transporting natural gas from a wellhead, or from a metering point for natural gas produced by one or more wells, to a point of entry into a main transmission line;

(6) General rate filing means any filing which requests changes in overall revenue requirements for a jurisdictional utility;

(7) High-volume ratepayer means a ratepayer whose natural gas requirements equal or exceed five hundred therms per day as determined by average daily consumption;

(8) Interstate pipeline means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the federal Natural Gas Act, 15 U.S.C. 717 et seq., as such act existed on January 1, 2003;

(9) Intrastate natural gas utility business means all of that portion of the business of a natural gas public utility over which the commission has jurisdiction under the State Natural Gas Regulation Act;

(10) Jurisdictional utility means a natural gas public utility subject to the jurisdiction of the commission. Jurisdictional utility does not mean a natural gas public utility which is not subject to the jurisdiction of the commission pursuant to section 3 of this act;

(11) Natural gas public utility means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers that owns, controls, operates, or manages, except for private use, any equipment, plant, or machinery, or any part thereof, for the conveyance of natural gas through pipelines in or through any part of this state. Natural gas public utility does not mean a natural gas utility owned or operated by a city or a metropolitan utilities district. Natural gas public utility does not include any activity of an otherwise jurisdictional corporation, company, individual, or association of persons or their trustees, lessees, or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel. Natural gas public utility does not include any gas gathering system or interstate pipeline;

(12) Rate means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any jurisdictional utility for any service;

(13) Rate area means the geographic area within the state served by a single natural gas public utility through a common pipeline system from the same natural gas supply source within the common system for which the utility

has similar costs for serving ratepayers of the same class; and

(14) Therm is equivalent to one hundred thousand BTUs.

Sec. 3. (1) A natural gas public utility shall not be subject to the jurisdiction of the commission or the requirements of the State Natural Gas Regulation Act if (a) it distributes, sells, or transports natural gas or provides natural gas services to persons receiving services through fewer than seven thousand five hundred meters in the state, (b) it has entered into an agreement with a city in which it distributes, sells, or transports natural gas or provides natural gas services that establishes the terms and conditions of the service and the rates to be paid and such agreement is authorized by an ordinance in effect at the time of the distribution, sale, or transportation of natural gas or provision of natural gas services, and (c) the terms and conditions of such agreement are applicable to customers, if any, served by the natural gas public utility outside the jurisdiction of the city.

(2) Any ratepayer or city served by a natural gas public utility pursuant to subsection (1) of this section, the commission, the public advocate, or the natural gas public utility providing service pursuant to subsection (1) of this section may pursue an action in the district court of the county in which such utility operates for a determination as to whether or not such utility is subject to the jurisdiction of the commission and the requirements of the act by reason of the failure to meet one or more of the qualifying factors set out in subsection (1) of this section.

Sec. 4. (1) The commission shall have full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Except as provided in the Nebraska Natural Gas Pipeline Safety Act of 1969, and notwithstanding any other provision of law, such power, authority, and jurisdiction shall extend to, but not be limited to, all matters encompassed within the State Natural Gas Regulation Act and sections 57-1301 to 57-1307.

(2) The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission.

Sec. 5. (1) The commission may adopt and promulgate rules and regulations to govern its proceedings and with regard to the mode and manner of all investigations, tests, audits, inspections, filings, and hearings. The commission may adopt and promulgate rules and regulations governing matters in the State Natural Gas Regulation Act and in furtherance of the act, including, but not limited to:

(a) Procedures and requirements for applications for rate and tariff changes;

(b) Requirements for jurisdictional utilities to maintain and make available to the public and the commission records and information;

(c) Requirements and procedures regarding customer billings and meter readings;

(d) Requirements regarding availability of meter tests;

(e) Requirements regarding billing adjustments for meter errors;

(f) Procedures and requirements for handling customer disputes and complaints;

(g) Procedures and requirements regarding temporary service, changes in location of service, and service interruptions;

(h) Standards and procedures to ensure nondiscriminatory credit policies;

(i) Procedures, requirements, and record-keeping guidelines regarding deposit policies;

(j) Procedures, requirements, and record-keeping guidelines regarding customer refunds;

(k) Policies for refusal of natural gas service;

(l) Policies for disconnection and transfer of natural gas service;

(m) Customer payment plans for delinquent bills;

(n) Requirements regarding advertising;

(o) The assessment and taxation of costs and fees;

(p) Procedures, requirements, and policies regarding the preservation, confidentiality, and disclosure of records in the possession of the commission; and

(q) Reporting requirements for transactions involving affiliated interests of jurisdictional utilities.

(2) The commission may:

(a) Confer with officers of other states and officers of the United States on any matter pertaining to the commission's official duties;

(b) Enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States, or any official, agency, or instrumentality thereof, or any similar commission of another state, for the purpose of carrying out the commission's duties and to that end receive and disburse any contributions, grants, or other financial assistance as a result of or pursuant to such agreements or contracts; and

(c) Make joint investigations, hold joint hearings within or outside the state, and issue joint or concurrent orders in conjunction or concurrence with such official, agency, instrumentality, or commission.

(3) The Attorney General, when requested, shall give the commission such counsel and advice as the commission may from time to time require. The Attorney General shall aid and assist the commission in all judicial hearings, suits, and proceedings in which the commission requests the Attorney General's assistance.

Sec. 6. Every jurisdictional utility shall publish and file with the commission copies of all schedules of rates and shall furnish the commission copies of all terms and conditions of service and contracts between jurisdictional utilities pertaining to any and all jurisdictional services to be rendered by such jurisdictional utilities. The commission may adopt and promulgate reasonable rules and regulations regarding the form and filing of all schedules of rates and all rules and regulations of such jurisdictional utility, including such protection of confidentiality as requested by the jurisdictional utility, and the jurisdictional utility's suppliers and ratepayers, for contracts entered into by them, and as the commission determines reasonable and appropriate.

Sec. 7. Except as otherwise provided in the State Natural Gas Regulation Act, all orders, rules, regulations, practices, services, rates, charges, classifications, and tolls fixed by the commission shall be prima facie reasonable unless or until changed or modified by the commission or in pursuance of proceedings instituted in court as provided in the act.

Sec. 8. (1) The provisions of this section do not apply to general rate filings.

(2) Unless the commission otherwise orders, no jurisdictional utility shall make effective any changed rate or any term or condition of service pertaining to the service or rates of such utility, except by filing the same with the commission at least thirty days prior to the proposed effective date. The commission, for good cause, may allow such changed rate or any term or condition of service pertaining to the service or rates of any such utility, to become effective on less than thirty days' notice. If the commission allows a change to become effective on less than thirty days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change or the date of the order if no effective date is otherwise established. Any such proposed change shall be shown by filing with the commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules, or classifications, or in new issues thereof.

(3) Whenever any jurisdictional utility files with the commission the changes desired to be made and put in force by such utility, the commission, either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such change and defer the effective date of such change in rate or any term or condition of service pertaining to the service or rates of any such utility, by delivering to such utility a statement in writing of its reasons for such suspension.

(4) The commission shall not delay the effective date of the proposed change in rate or any term or condition of service pertaining to the service or rates of any such jurisdictional utility, more than one hundred eighty days beyond the date the utility filed its application requesting the proposed change. If the commission does not suspend the proposed change within thirty days after the date the same is filed by the utility, such proposed change shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate or any term or condition of service pertaining to the service or rates of any such utility, within one hundred eighty days after the date the utility files its application requesting the proposed change, then the proposed change shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (a) in any proceeding initiated as a result of a filing by a utility of new or changed rates or terms and conditions of service, the commission shall, within thirty days of the receipt of such

filing, review the applications, documents, and submissions made with such filing to determine whether or not they conform to the minimum requirements of the commission regarding such filings as established by applicable rule, regulation, or commission order. If such applications, documents, or submissions fail to substantially conform with such requirements, they will be deemed defective and the filing shall not be deemed to have been made until such applications, documents, and submissions are determined to be in conformity by the commission with minimum standards, and (b) nothing in this subsection shall preclude the jurisdictional utility and the commission from agreeing to a waiver or an extension of the one-hundred-eighty-day period.

(5) Except as provided in subsection (4) of this section, no change shall be made in any rate or in any term or condition of service pertaining to the service or rates of any such jurisdictional utility, without the consent of the commission. Within thirty days after such changes have been authorized by the commission or become effective as provided in subsection (4) of this section, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted by the commission, shall be available for public inspection in every office and facility open to the general public of such jurisdictional utility in this state.

(6) Except as to the time limits prescribed in subsection (4) of this section, proceedings under this section shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Sec. 9. (1) The commission, upon its own initiative, may investigate all schedules of rates, contracts, and terms and conditions of service of jurisdictional utilities. If after notice, investigation, and hearing the commission finds that such rates or terms and conditions of service are unjust, unreasonable, unjustly discriminatory, or unduly preferential, the commission shall have the power to establish and order substituted therefor such rates and such terms and conditions of service as are just and reasonable, effective as of the date of the order.

(2) If after investigation and hearing it is found that any term or condition of service, measurement, practice, act, or service complained of is unjust, unreasonable, unduly preferential, unjustly discriminatory, or otherwise in violation of the State Natural Gas Regulation Act or of the orders of the commission or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission may substitute therefor, effective as of the date of the order, such other terms or conditions of service, measurements, practices, acts, or service and make such order respecting any such changes in such terms and conditions of service, measurements, practices, acts, or service as are just and reasonable. When, in the judgment of the commission, public necessity and convenience require, the commission may establish just and reasonable rates, charges, or privileges, but all such rates, charges, and privileges shall be open to all users of a like kind of service under similar circumstances and conditions. Hearings shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Sec. 10. (1) A jurisdictional utility may provide service at negotiated rates, contracts, and terms and conditions of service under contract to high-volume ratepayers. Service under the contracts shall be provided on such terms and conditions and for such rates or charges as the jurisdictional utility and the high-volume ratepayer agree, without regard to any rates, tolls, tariffs, or charges the jurisdictional utility may have filed with the commission. Upon the request of the commission, the jurisdictional utility shall file such contracts with the commission. The contracts are not public records within the meaning of sections 84-712 to 84-712.09 and their disclosure to any other person or corporation for any purpose is expressly prohibited, except that they may be used by the commission in any investigation or proceeding. Except as provided in this subsection, high-volume ratepayers shall not be subject to the jurisdiction of the commission.

(2) A jurisdictional utility may change any rate or other charge demanded or received from or terms and conditions applicable to its agricultural ratepayers and interruptible ratepayers not otherwise qualifying as high-volume ratepayers, upon notice to the commission and to the public. The commission may not suspend such rate or charge filed by a jurisdictional utility, except that the commission, after hearing and order, may change any such rate or other charge demanded or received from a jurisdictional utility's agricultural ratepayers upon complaint effective as of the date of the order, if such rate or other charge is found in such complaint proceeding to be unduly preferential or unjustly discriminatory. The provisions of this subsection apply notwithstanding any provision in the State Natural Gas

Regulation Act to the contrary.

Sec. 11. (1) Upon a complaint in writing made against any jurisdictional utility (a) that any rates or terms and conditions of service of such utility are in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, (b) that any terms and conditions of service or act whatsoever affecting or relating to any service performed or to be performed by such utility for the public, is in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, or (c) that any service performed or to be performed by such utility for the public is inadequate, insufficient, or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.

(2) No order changing such rates, terms and conditions, or acts complained of shall be made or entered by the commission without a formal public hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110, of which due notice shall be given by the commission to such utility or to such complainant or complainants, if any.

(3) The commission shall have power to require jurisdictional utilities to make such improvements and do such acts as are or may be required by law to be done by any such utility, including refunds as authorized by law.

(4) The commission may hold public hearings in the area being impacted by any rate investigation or rate increase being considered by the commission to hear public comments.

(5) If after investigation and hearing the rates or terms and conditions of service of any jurisdictional utility are found unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way in violation of the provisions of the State Natural Gas Regulation Act or of any of the laws of the State of Nebraska, the commission shall have the power to establish, and to order substituted therefor, to be effective as of the date of the order, such rates or terms and conditions of service as the commission determines to be just, reasonable, and necessary. If it is found that any term or condition of service, practice, or act relating to any service performed or to be performed by such utility is in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unduly preferential, or otherwise in violation of any of the provisions of the act or of any of the laws of the State of Nebraska, the commission may substitute therefor by order such other terms and conditions of service, practice, service, or act as it determines to be just, reasonable, and necessary, to be effective as of the date of the order.

Sec. 12. On timely filing of a petition for intervention, any county or city may intervene, on behalf of ratepayers located within their respective boundaries, in any rate proceeding before the commission that involves the rates of a jurisdictional utility serving ratepayers located within their respective boundaries.

Sec. 13. In proceedings for review of an action of the commission, the commission and any jurisdictional utility which participated in the agency proceeding and could be bound by the review shall be parties to the proceedings and shall have all rights and privileges granted by the State Natural Gas Regulation Act to any other party to such proceedings.

Sec. 14. Any action of the commission pursuant to the State Natural Gas Regulation Act is subject to review in accordance with section 75-136.

Sec. 15. (1) Every jurisdictional utility shall file with the commission an annual report and such monthly or other regular reports, or special reports, and such other information as the commission may require.

(2) Any jurisdictional utility which fails, neglects, or refuses to file with the commission any annual reports, statements, monthly or regular reports, or special reports required by the commission pursuant to the State Natural Gas Regulation Act or rules and regulations of the commission shall be subject to a civil penalty of not more than five hundred dollars.

Sec. 16. No jurisdictional utility shall purchase or acquire, take, or hold any part of the voting stock, bonds, or other forms of indebtedness of any competing jurisdictional utility, either as owner or pledgee, unless authorized by the commission.

Sec. 17. (1) Any jurisdictional utility property may be deemed to be completed and dedicated to commercial service if construction of the property will be commenced and completed in one year or less.

(2) The commission may determine that property of a jurisdictional utility which has not been completed and dedicated to commercial service may be deemed to be used and useful in the utility's service to the public.

Sec. 18. The commission shall have authority to examine and audit all accounts of jurisdictional utilities, and all items shall be allocated to the accounts prescribed by the commission. Every jurisdictional utility shall be required to keep and render its books, accounts, papers, and records

accurately and truthfully in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. All accounting information provided by jurisdictional utilities regarding Nebraska jurisdictional operations shall be presented in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. The agents, accountants, or examiners hired or contracted by the Public Service Commission shall have authority under the direction of the commission to inspect and examine any and all relevant books, accounts, papers, records, property, and memoranda kept by such utilities.

Sec. 19. (1) For purposes of this section, nonregulated private enterprise means: (a) The business of selling or otherwise providing any gas or electric household appliance; (b) the business of installing any gas or electric household appliance; or (c) the business of servicing any gas or electric household appliance under a contract providing for maintenance or repair of such appliance for a period of time specified by the contract.

(2) Each jurisdictional utility shall maintain, in accordance with generally accepted accounting principles, separate accounts for all nonregulated private enterprise engaged in by such utility. The accounting shall include both costs and revenue associated with such enterprise. Costs to be allocated to such separate accounts shall include materials, labor, insurance, transportation, and all other direct and indirect costs of engaging in the nonregulated private enterprise. Costs or revenue required to be allocated to such separate accounts shall not be included in any rate, toll, or charge for any utility service of the utility.

(3) Except as provided in subsection (4) of this section, the commission may at any time examine and audit the books, accounts, papers, records, and memoranda kept by a natural gas public utility in order to determine compliance with this section.

(4) No audit shall be conducted pursuant to this section more often than once every two years, but nothing in this subsection shall be construed to limit the authority of the commission pursuant to other provisions of the State Natural Gas Regulation Act to examine and audit, for any purpose, the books, accounts, papers, records, and memoranda kept by a natural gas public utility.

Sec. 20. No franchise ordinance involving a jurisdictional utility adopted on or after the effective date of this act shall include provisions contrary to or inconsistent with the State Natural Gas Regulation Act. A city shall file with the commission copies of any such franchise ordinance adopted on or after the effective date of this act within thirty days of its passage.

Sec. 21. No franchise or certificate of convenience granted to a jurisdictional utility shall be assigned, transferred, or leased unless the assignment, transfer, or lease has been approved by the commission as being consistent with the public interest.

Sec. 22. Any person who knowingly makes any false entry in the accounts, books of account, records, or memoranda kept by any jurisdictional utility, who knowingly destroys, mutilates, alters, or by any other means or device falsifies the record of any such account, book of accounts, record, or memorandum, who knowingly neglects or fails to make full, true, and correct entries in such account, book of accounts, record, or memorandum of all facts and transactions pertaining to such utility, or who knowingly makes any false statement required to be made to the commission, shall be guilty of a Class IV felony.

Sec. 23. The commission may compel compliance with the State Natural Gas Regulation Act and compel compliance with the orders of the commission by proceeding in mandamus, injunction, or other appropriate civil remedies or by appropriate criminal proceedings in any court of competent jurisdiction.

Sec. 24. (1) The commission shall have power to intervene in any case pending before the relevant federal agency in which interstate rates, service, or safety issues affecting the interest of Nebraska residents, ratepayers, or natural gas public utilities are involved, and the commission is hereby empowered and authorized to pay all expenses of investigation and prosecution of litigation instituted under this section.

(2) If any interstate rate, toll, charge, term or condition of service, classification, or schedule of rates or tolls is found to be unjust, unreasonable, excessive, unjustly discriminatory, unduly preferential, in violation of interstate commerce law, or in conflict with the rules, regulations, or orders of a federal agency, the commission may apply by petition or other proper method to the relevant federal agency for relief.

Sec. 25. (1) Every rate made, demanded, or received by any natural gas public utility shall be just and reasonable. Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent

in application to a class of ratepayers. Rates negotiated with agricultural ratepayers and high-volume ratepayers in conformity with the State Natural Gas Regulation Act shall not be considered discriminatory.

(2) No jurisdictional utility shall, as to rates or terms and conditions of service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

(3) The commission, in the exercise of its power and duty to determine just and reasonable rates for natural gas public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the jurisdictional utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.

(4) Cost of service shall include operating expenses and a fair and reasonable return on rate base, less appropriate credits.

(5) In determining a fair and reasonable return on the rate base of a jurisdictional utility, a rate-of-return percentage shall be employed that is representative of the utility's weighted average cost of capital including, but not limited to, long-term debt, preferred stock, and common equity capital.

(6) The rate base of the jurisdictional utility shall consist of the utility's property, used and useful in providing utility service, including the applicable investment in utility plant, less accumulated depreciation and amortization, allowance for working capital, such other items as may be reasonably included, and reasonable allocations of common property, less such investment as may be reasonably attributed to other than investor-supplied capital unless such deduction is otherwise prohibited by law.

(7) Operating expenses shall consist of expenses prudently incurred to provide natural gas service including (a) a reasonable allocation of common expenses as authorized and limited by section 19 of this act and (b) the quantity and type of purchased services regulated by the Federal Energy Regulatory Commission.

(8) In determining the cost of service, the Public Service Commission shall give effect to all costs and allocations as reflected in the rate schedules approved by the Federal Energy Regulatory Commission.

(9) The Public Service Commission may include in a jurisdictional utility's rate base the full or partial value of stranded investment which was prudently incurred when the investment actually was, or reasonably was expected to be, used and useful in providing service to ratepayers and was stranded due to changes in regulation or other circumstances reasonably beyond the utility's control and subject to any reasonable obligation of the utility to mitigate the cost.

(10) Subsidization is prohibited. For purposes of this subsection, subsidization means the establishment of rates to be collected from a ratepayer or class of ratepayers of a jurisdictional utility that (a) include costs that properly are includable in rates charged to other ratepayers or classes of ratepayers of the utility, or other persons, firms, companies, or corporations doing business with the jurisdictional utility, (b) exclude costs that properly are includable in rates charged to such ratepayers or classes of ratepayers, or (c) include costs that properly are chargeable or allocable to a nonregulated private enterprise engaged in by such jurisdictional utility.

Sec. 26. If the commission determines on complaint or upon its own initiative, and after hearing on due notice in accordance with rules and regulations adopted and promulgated pursuant to section 75-110, that the payment of any dividend by a jurisdictional utility will impair the financial condition of such company so that such utility cannot maintain its property in a safe operating condition and render adequate service to its ratepayers, the commission shall enter an order prohibiting the payment of such dividends until such time as such company has shown to the commission that the conditions upon which such order was based have ceased to exist.

Sec. 27. (1) A jurisdictional utility shall not subject property used in its intrastate natural gas utility business in this state to an encumbrance for the purpose of securing the payment of any new indebtedness or replacement indebtedness in an amount exceeding one hundred million dollars attributable to this state unless first approved by the commission. Approval or disapproval by the commission shall be by formal written order, which shall be issued within forty-five days of the filing of the application.

(2) Upon the application of a jurisdictional utility for approval of and prior to the encumbrances, the commission may make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers,

documents, or contracts as in its discretion it may deem necessary. If the commission finds that the proposed financing is reasonable and proper and in the public interest and will not be detrimental to the interests of the ratepayers affected thereby, the commission shall by written order grant its permission for the proposed financing.

Sec. 28. (1) No reorganization or change of control of a jurisdictional utility shall take place without prior approval by the commission. The commission shall not approve any proposed reorganization or change of control if the commission finds, after public notice and public hearing, that the reorganization or change of control will adversely affect the utility's ability to serve its ratepayers.

(2) For purposes of this section, reorganization or change of control means any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of a majority of the voting capital stock of a jurisdictional utility and does not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

Sec. 29. (1) The commission shall not disclose to or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, any information of a jurisdictional utility that qualifies as a record which may be withheld from the public upon request of the party submitting such record if the information qualifies under subdivision (3) of section 84-712.05, unless the commission finds that disclosure is warranted after consideration of the following factors:

(a) Whether disclosure will significantly aid the commission in fulfilling its functions;

(b) The harm or benefit which disclosure will cause to the public interest;

(c) The harm which disclosure will cause to the utility; and

(d) Alternatives to disclosure that will serve the public interest and protect the utility.

(2) If the commission finds that disclosure is warranted pursuant to subsection (1) of this section, the commission shall give the utility notice before disclosing such information.

Sec. 30. (1) The office of public advocate is created as a separate and independent division within the commission. The public advocate shall represent the interests of Nebraska citizens and all classes of jurisdictional utility ratepayers, other than high-volume ratepayers, in matters involving jurisdictional utilities and shall act as trial staff before the commission. In the exercise of his or her powers, the public advocate shall consider all relevant factors, including, but not limited to, the provision of safe, efficient, and reliable utility services at just and reasonable rates.

(2) Notwithstanding the provisions of section 75-105, the executive director of the commission, upon consultation with the members of the commission, shall appoint the public advocate. The public advocate shall serve a four-year term and shall be removed only for good cause. The executive director shall be responsible for reviewing the performance of the public advocate, for removing the public advocate in accordance with law, and for filling any vacancy in that position in the same manner as the original appointment.

(3) The public advocate shall be an attorney and shall have experience in consumer-related utility issues or in the operation, management, or regulation of utilities. No person owning stocks or bonds in a corporation subject in whole or in part to regulation by the commission or who has any pecuniary interest in such corporation shall be appointed as public advocate.

Sec. 31. (1) The public advocate shall have the power to:

(a) Investigate the legality and reasonableness of rates, charges, and practices of jurisdictional utilities;

(b) Petition for relief, request, initiate, and intervene in any proceeding before the commission concerning such utilities;

(c) Represent and appear for ratepayers and the public in proceedings before the commission and in any negotiations or other measures to resolve disputes that give rise to such proceedings;

(d) Represent and appear for ratepayers and the public in any negotiations or other measures to resolve disputes that give rise to proceedings before the commission and make and seek approval of agreements to settle such disputes; and

(e) Make motions for rehearing or reconsideration, appeal, or seek judicial review of any order or decision of the commission regarding jurisdictional utilities.

(2) The public advocate shall not advocate for or on behalf of any single individual, organization, or entity.

(3) The public advocate may enter into stipulations with other parties in any proceeding to balance the interests of those it represents with the interests of the jurisdictional utilities as a means of improving the quality of resulting decisions in a highly technical environment and minimizing the cost of regulation.

Sec. 32. The office of the public advocate shall be located at the same location as the commission but shall be kept separate from the commission's other offices as provided by rules and regulations adopted and promulgated by the commission. The public advocate may hire or contract with attorneys, legal assistants, experts, consultants, secretaries, clerks, and such other staff necessary for the full and efficient discharge of the duties of the office as permitted by the budget of the public advocate as approved by the commission. The public advocate shall employ and supervise personnel as authorized by the budget approved by the commission. The employees of the public advocate shall not be supervised or directed by the commission. Funding for the office of public advocate shall be approved by the commission and collected through the assessment process as provided for in sections 40 and 41 of this act. The commission shall decide all matters of shared administrative and clerical personnel.

Sec. 33. The public advocate and his or her employees or agents shall have free access to all files, records, and documents of the commission except:

(1) Personal information in confidential personnel records;
(2) Records which represent the work product of legal counsel of the commission, and records of confidential or privileged communications between the members of the commission and its legal counsel, when the records relate to a proceeding before the commission in which the public advocate is, or is appearing for, a party; and

(3) Records that are designated as confidential pursuant to commission rules and regulations, except as permitted by a nondisclosure agreement between a specified representative of the public advocate and the commission and the person who claims the records at issue are confidential.

Sec. 34. The files, records, and documents of the public advocate shall be separately kept, maintained, and controlled by the public advocate.

Sec. 35. In any proceeding before the commission in which the public advocate is a party or is appearing for a party, the public advocate shall be considered a party for purposes of the restrictions on ex parte communications set forth in sections 75-130.01 and 84-914.

Sec. 36. The commission is hereby authorized to designate or appoint, from among its employees, examiners and referees to make investigations that are required of the commission by law. Such investigations shall be made and conducted as and in the manner and at the place directed by the commission. The examiners and referees shall report their findings and recommendations to the commission.

Sec. 37. (1) The commission is hereby authorized to contract for professional services and expert assistance, including, but not limited to, the services of engineers, accountants, attorneys, and economists, to assist in investigations and appraisals.

(2) Such contracts shall be negotiated by the chairperson of the commission, the executive director, or the designee of the executive director. The commission shall consider all proposals by persons applying to perform such contracts and shall award the contracts.

Sec. 38. (1) The provisions of this section apply only to general rate filings.

(2) Except as provided in subsection (3) of this section, a jurisdictional utility shall provide written notice to each city that will be affected by a proposed change in rates simultaneously with the filing with the commission of a request for a change in rates pursuant to the State Natural Gas Regulation Act. Such notice shall identify the cities that will be affected by the rate filing. The jurisdictional utility shall also file the information prescribed by the act and rules and regulations for rate changes adopted and promulgated by the commission with each city affected by such proposed rate change in electronic or digital format or, upon request, as paper documents.

(3) A jurisdictional utility may determine not to participate in negotiations with affected cities. Such decision, if indicated by written notice in the initial rate filing to the commission, shall relieve it from the duty of supplying notice to such cities as specified in subsection (2) of this section. The jurisdictional utility shall, not later than fifteen days after the initial filing, inform the commission by written notice of any decision not to participate in negotiations.

(4) Affected cities shall have a period of sixty days after the date

of such filing within which to adopt a resolution evidencing their intent to negotiate an agreed rate change with the jurisdictional utility. A copy of the resolution adopted by each city under this section, notice of the rejection by a city of such a resolution, or written notice by an authorized officer of the city of the city's rejection of negotiations shall be provided to the commission and to the jurisdictional utility within seven days after its adoption.

(5) Any city may, at any time, by resolution adopted by its governing body and filed with the commission, indicate its rejection of participation in any future negotiations pertaining to any rate change whenever the same may be filed. Such resolution shall be treated as a duly filed notice of rejection of participation in negotiations for any rate filing by a jurisdictional utility at any time thereafter. The city filing a resolution pursuant to this subsection shall be bound thereby until such time as a resolution by the governing body of that city revoking its prior rejection of participation is filed with the commission.

(6) If the commission receives resolutions adopted prior to the expiration of the sixty-day period provided for in subsection (4) of this section evidencing the intent to negotiate from cities representing more than fifty percent of the ratepayers within the affected cities, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the rate filing until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first. The commission's certification shall be issued within eight business days after the earlier of (a) receipt of a copy of the resolutions from cities representing fifty percent or more of ratepayers within the affected cities or (b) the end of the sixty-day period provided for in subsection (4) of this section.

(7) When (a) the commission receives notice or has written documentary evidence on file from cities representing more than fifty percent of the ratepayers within the affected cities which notice or documents either expressly reject negotiations or reject such a resolution or (b) the commission receives written notice from the jurisdictional utility expressly rejecting negotiations, the rate change review by the commission shall proceed immediately from the date when the commission makes such a determination or receives such notice.

(8) When the sixty-day period provided for in subsection (4) of this section has expired without the receipt by the commission of resolutions from cities representing more than fifty percent of the ratepayers within the affected cities evidencing their intent to negotiate an agreed rate change review by the commission with the jurisdictional utility, the rate change shall proceed immediately from the date when the commission makes such a determination.

(9) If commission certification to pursue negotiations is received, cities adopting resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over such proposed rate change.

(10) (a) The jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates sixty days after the filing with the commission, if the commission certifies the rate filing for negotiations.

(b) If the rate filing is not certified by the commission for negotiations, the jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates, ninety days after filing with the commission.

(11) Negotiations between the cities and the jurisdictional utility shall continue for a period not to exceed ninety days after the date of the rate filing, except that the parties may mutually agree to extend such period to a future date certain and shall provide such stipulation to the commission.

(12) Notwithstanding any other provision of law, any information exchanged between the jurisdictional utility and cities is not a public record within the meaning of sections 84-712 to 84-712.09 and its disclosure to the commission, its staff, the public advocate, or any other person or corporation, for any purpose, is expressly prohibited.

(13) If the cities and the jurisdictional utility reach agreement upon new rates, such agreement shall be reduced to writing, including proposed findings of fact, proposed conclusions of law, and a proposed commission order, and filed with the commission. If cities representing more than fifty percent of the ratepayers within the cities affected by the proposed rate change enter into an agreement upon new rates and such agreement is filed with and approved by the commission, such rates shall be effective and binding upon all of the jurisdictional utility's ratepayers affected by the rate filing.

(14) Any agreement filed with the commission shall be presumed in

the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission within a reasonable time.

(15) (a) Except as provided in subdivision (c) of this subsection, if the negotiations fail to result in an agreement upon new rates, the rates requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within two hundred ten days after the date of the expiration of the negotiation period or after the date upon which the jurisdictional utility and the cities file a written agreement that the negotiations have failed and that the rate change review by the commission should proceed as provided in subsection (7) of this section.

(b) Except as provided in subdivision (c) of this subsection, if the filing is not certified for negotiations, the rate requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within two hundred ten days after the date of the filing.

(c) The commission may extend the two-hundred-ten-day deadlines specified in subdivision (a) or (b) of this subsection by a period not to exceed an additional sixty days upon a finding that additional time is necessary to properly fulfill its responsibilities in the proceeding.

(16) Within thirty days after such changes have been authorized by the commission or become effective, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted and promulgated by the commission, shall be available for public inspection in every office and facility open to the general public of the jurisdictional utility in this state.

Sec. 39. (1) The Municipal Rate Negotiations Revolving Loan Fund is created. The fund shall be used to make loans to cities for rate negotiations under section 38 of this act. Only one loan may be made for each rate filing made by a jurisdictional utility within the scope of such section. Money in the Municipal Natural Gas Regulation Revolving Loan Fund that is not necessary to finance rate proceedings initiated prior to the effective date of this act shall be transferred to the Municipal Rate Negotiations Revolving Loan Fund on the effective date of this act, and repayments of loans or other obligations owing to the Municipal Natural Gas Regulation Revolving Loan Fund on the effective date of this act shall be deposited in the Municipal Rate Negotiations Revolving Loan Fund upon receipt. Any obligations against or commitments of money from the Municipal Natural Gas Regulation Revolving Loan Fund on the effective date of this act shall be obligations or commitments of the Municipal Rate Negotiations Revolving Loan Fund.

(2) The Municipal Rate Negotiations Revolving Loan Fund shall be administered by the commission which shall adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include:

(a) Loan application procedures and forms; and

(b) Fund-use monitoring and quarterly accounting of fund use.

(3) Applicants for a loan from the fund shall provide a budget statement which specifies the proposed use of the loan proceeds. Such proceeds may only be used for the costs and expenses incurred by the city to analyze rate filings for the purposes specified in section 38 of this act. Such costs and expenses may include the cost of rate consultants and attorneys and any other necessary costs related to the negotiation process. Disbursements from the fund shall be audited by the commission. The affected jurisdictional utility may petition the commission to initiate a proceeding to determine whether the disbursements from the fund were expended by the negotiating cities consistent with the requirements of this section.

(4) The fund shall be audited as part of the regular audit of the commission's budget, and copies of the audit shall be available to all cities and any jurisdictional utility. Audits conducted pursuant to this section are public records.

(5) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. If the fund balance exceeds four hundred thousand dollars, the income on the money in the fund shall be credited to the permanent school fund until the balance of the Municipal Rate Negotiations Revolving Loan Fund falls below such amount.

(6) A city which receives a loan under this section shall be responsible to provide for the opportunity for all other cities engaged in the same negotiations with the same jurisdictional utility to participate in all negotiations. Such city shall not exclude any other city from the information

or benefits accruing from the use of loan funds.

(7) Upon the conclusion of negotiations, regardless of the result, the loan shall be repaid by the jurisdictional utility to the commission within thirty days after the date upon which it is billed by the commission. The utility shall recover the amount paid on the loan by a special surcharge on ratepayers who are or will be affected by the rate increase request. These ratepayers may be billed on their monthly statements for a period not to exceed twelve months, and the surcharge may be shown as a separate item on the statements as a charge for rate negotiation expenses.

Sec. 40. (1) Whenever, in order to carry out the duties imposed upon it by law, the commission, in a proceeding upon its own motion, on complaint, or upon an application to it, including rate filings, deems it necessary to investigate any jurisdictional utility or make appraisals of the property of any jurisdictional utility, such utility, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of one hundred dollars, including both direct and indirect expenses incurred by the commission or its staff, shall pay such expenses which shall be assessed against such utility by the commission. Such expenses shall be assessed beginning on the date that the proceeding is filed or beginning three business days after the commission gives the utility notice of the assessment by United States mail, whichever is later. The commission shall give such utility notice and opportunity for a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. At such hearing, the utility may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such utility. The finding of the commission as to the necessity of the investigation or appraisal and the assessment of the expenses thereof shall be conclusive, except that no such utility shall be liable for payment of any such expenses incurred by the commission in connection with any proceeding before or within the jurisdiction of any federal regulatory body.

(2) The commission shall ascertain the expenses of any such investigation or appraisal and by order assess such expenses against the jurisdictional utility investigated or whose property is appraised in such proceeding and shall render a bill therefor, by United States mail, to the natural gas public utility, either at the conclusion of the investigation or appraisal or from time to time during such investigation or appraisal. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such utility, within fifteen days after the mailing thereof, such utility shall pay to the commission the amount of the assessment for which it is billed. Such payment when made shall be remitted by the commission to the State Treasurer for credit to the Public Service Commission Regulation Fund for the use of the commission. The total amount, in any one fiscal year, for which any utility shall be assessed under this section shall not exceed the following: (a) For a jurisdictional utility that has not filed an annual report with the commission as provided in the State Natural Gas Regulation Act prior to the beginning of the commission's fiscal year, actual expenses, including direct and indirect expenses, incurred by the commission; and (b) for any other jurisdictional utility, six-tenths of one percent of the utility's gross operating jurisdictional revenue less gas cost derived from intrastate natural gas utility business as reflected in the last annual report filed with the commission pursuant to the act prior to the beginning of the commission's fiscal year. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

(3) The commission, in accordance with the procedures prescribed by subsection (2) of this section, may assess against an entity, other than an individual residential ratepayer or individual agricultural ratepayer, that is not subject to assessment pursuant to subsection (1) of this section actual expenses of any services extended, filings processed, or actions certified by the commission for the entity.

Sec. 41. (1) The commission shall determine, within fifteen days after each quarter-year for each such quarter-year, the total amount of its expenditures during such period of time. The total amount shall include the salaries of members and employees and all other lawful expenditures of the commission, including all expenditures in connection with investigations or appraisals made under the State Natural Gas Regulation Act, except that there shall not be included in such total amount of expenditures for the purpose of this section the expenditures during such period of time which are otherwise provided for by fees and assessments pursuant to the act.

(2) From the amount determined under subsection (1) of this section, the commission shall deduct (a) all amounts collected under section 40 of this act during such period of time and (b) all other funds collected with regard

to jurisdictional utilities.

(3) To the remainder, after making the deductions under subsection (2) of this section, the commission shall add such amount as in its judgment may be required to satisfy any deficiency in the prior assessment period's assessment and to provide for anticipated increases in necessary expenditures for the current assessment period.

(4) The amount determined under subsections (1) through (3) of this section shall be assessed by the commission against all jurisdictional utilities and shall not exceed, during any fiscal year, the greater of one hundred dollars or each utility's proportionate share of the total amount determined under this section based upon meters served by each utility as a proportion of all meters of jurisdictional utilities. Such assessment shall be paid to the commission within fifteen days after the notice of assessment has been mailed to such utilities, which notice of assessment shall constitute demand of payment thereof.

(5) The commission shall remit all money received by or for it for the assessment imposed under this section to the State Treasurer for credit to the Public Service Commission Regulation Fund.

(6) The commission shall not, pursuant to this section, assess a total of more than two hundred fifty thousand dollars in a fiscal year, exclusive of uncollectible fees and assessments charged or assessed pursuant to this section. This subsection terminates on June 30, 2005.

(7) (a) Until June 1, 2007, a jurisdictional utility may recover the amount of any assessments or charges paid to the commission pursuant to this section and section 40 of this act through a special surcharge on ratepayers which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility. The surcharge shall be shown on the statements as a charge for state regulatory assessments. The commission shall permit the utility to include in such surcharge interest upon the amount of the charges and assessments paid to the commission prior to their recovery from ratepayers. Such interest shall be at a rate not to exceed the rate established by section 45-103.

(b) On and after June 1, 2007, the commission by general rule and regulation shall authorize the recovery of the amount of any assessments or charges paid to the commission pursuant to this section and section 40 of this act in a general rate filing or through a special surcharge which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility.

Sec. 42. The Public Service Commission Regulation Fund is created. Transfers may be made from the Public Service Commission Regulation Fund to the General Fund at the direction of the Legislature. The commission shall remit all money received by or for it in payment of the fees or assessments imposed by the State Natural Gas Regulation Act to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 43. If any jurisdictional utility against which an assessment has been made pursuant to the State Natural Gas Regulation Act, within fifteen days after the notice of such assessment, (1) neglects or refuses to pay the same or (2) fails to file objections to the assessment with the commission as provided in section 44 of this act, the commission shall transmit to the State Treasurer a certified copy of the notice of assessment, together with notice of neglect or refusal to pay the assessment, and on the same day the commission shall mail by registered mail to the utility against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such utility fails to pay such assessment to the State Treasurer within ten days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent per annum from and after the date on which the copy of the notice was mailed by registered mail to such utility.

Sec. 44. (1) Within fifteen days after the date of the mailing of any notice of assessment under sections 40 and 41 of this act, the jurisdictional utility against which such assessment has been made may file with the commission objections setting out in detail the ground upon which such objector regards such assessment to be excessive, erroneous, unlawful, or invalid. The commission, after notice to the objector, shall hold a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. The commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

(2) If any assessment against which objections have been filed is not paid within ten days after service of an order finding that such objections have been overruled and disallowed by the commission, the commission shall give notice of such delinquency to the State Treasurer and to the objector in the manner provided for in the State Natural Gas Regulation Act. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten days after service of the order of the commission, the commission shall notify the State Treasurer and the objector as in the case of delinquency in the payment of an original assessment. The State Treasurer shall then collect the amount of such assessment as provided in the case of an original assessment.

Sec. 45. Every jurisdictional utility against which an assessment is made shall pay the amount thereof and, after such payment, may under the conditions in the State Natural Gas Regulation Act, at any time within one year from the date the payment was made, sue the state in an action at law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid in whole or in part. If it is finally determined in such action that any part of the assessment, for which payment was made, was excessive, erroneous, unlawful, or invalid, the State Treasurer shall make a refund to the claimant as directed by the court.

Sec. 46. (1) No action for recovery of any amount paid pursuant to the State Natural Gas Regulation Act shall be maintained in any court unless objections have been filed with the commission as provided in section 44 of this act. In any action for recovery of any payments made under the act, the claimant shall be entitled to raise every relevant issue of law, but the commission's findings of fact made pursuant to the act shall be prima facie evidence of the facts therein stated.

(2) The following shall be deemed to be findings of fact of the commission within the meaning of the act: (a) Determinations of fact expressed in notices of assessments given pursuant to the act; and (b) determinations of fact set out in those minutes of the commission which record the action of the commission in connection with making the assessments and passing upon objections thereto.

Sec. 47. Natural gas utilities owned and operated by a city or a metropolitan utilities district shall establish rates and conditions of service for all residential ratepayers of each such utility in a nondiscriminatory manner.

Sec. 48. For purposes of this section and section 49 of this act:

(1) Aggregator means a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services; and

(2)(a) Competitive natural gas provider means a person who takes title to natural gas and sells it for consumption by a retail end user. Competitive natural gas provider includes an affiliate of a natural gas public utility.

(b) Competitive natural gas provider does not include the following:

(i) A jurisdictional utility;

(ii) A city-owned or operated natural gas utility or metropolitan utilities district in areas in which it provides natural gas service through pipes it owns; or

(iii) A natural gas public utility that is not subject to the act as provided in section 3 of this act in areas in which it is providing natural gas service in accordance with section 3 of this act.

Sec. 49. (1) The commission shall certify all competitive natural gas providers and aggregators providing natural gas services. In an application for certification, a competitive natural gas provider or aggregator shall reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The commission may establish reasonable conditions or restrictions on the certificate at the time of issuance. The commission shall adopt and promulgate rules and regulations to establish specific criteria for certification. The commission shall make a determination on an application for certification within ninety days after its submission unless the commission determines that additional time is necessary to consider the application. If the commission determines that additional time is necessary to consider the application, the commission may extend the time for making a determination for an additional sixty days.

(2) The commission may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.

(3) The commission shall allocate the costs and expenses reasonably attributable to certification and dispute resolution as authorized in this

section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and expenses of certification and dispute resolution shall be remitted to the State Treasurer for credit to the Public Service Commission Regulation Fund.

Sec. 50. (1) The State Natural Gas Regulation Act shall not be enforced retroactively before the effective date of this act. A rate filing made pursuant to the provisions of the Municipal Natural Gas Regulation Act prior to such date shall be governed by the act by its terms as in effect on the date of the filing. The enactment into law of the State Natural Gas Regulation Act shall not have the effect of releasing or waiving any right of action by the state, any body corporate and politic, municipal corporation, person, or corporation, pending on the effective date of this act, for any right which may have arisen or accrued under the Municipal Natural Gas Regulation Act.

(2) The rates, terms and conditions of service, and rate areas of a jurisdictional utility in effect on or before the effective date of this act shall remain in effect after the effective date of this act and shall be treated as if approved and adopted by the commission pursuant to the State Natural Gas Regulation Act.

(3) The rate areas established pursuant to the Municipal Natural Gas Regulation Act and in effect on the effective date of this act shall be the initial rate areas in effect under the State Natural Gas Regulation Act. Each jurisdictional utility shall file with the commission a map showing the boundaries of such areas and intervening and adjacent rural territories served within such rate areas.

(4) Except as provided in subsection (5) of this section, following the filing of maps pursuant to subsection (3) of this section, a jurisdictional utility may file with the commission a revised map or maps of any affected rate areas reflecting changes in the boundaries of one or more of the initially filed rate areas and such changes shall become effective upon filing. The commission may, upon its own initiative or upon complaint, review such rate area boundaries and, following notice and hearing, reject or modify proposed changes upon the basis that the proposed changes in boundaries are unduly preferential, unjustly discriminatory, or not just and reasonable.

(5) A rate area containing a city of the primary class shall not be changed to include any other city until after June 1, 2007.

Sec. 51. (1) Notwithstanding any other provisions in the State Natural Gas Regulation Act, a jurisdictional utility may file with the commission rates and one or more rate schedules and other charges, and rules and regulations pertaining thereto, that enable the utility to provide service to ratepayers under customer choice and other programs offered by a utility to unbundle one or more elements of the service provided by the utility.

(2) The commission shall not eliminate or modify the terms of any customer choice or other unbundling programs in existence on the effective date of this act, or as thereafter modified by a filing made by the jurisdictional utility, except as permitted by the act after complaint or the commission's own motion and hearing. In any rate determination made under the act, the commission shall not penalize the utility for any action prudently taken or decision prudently made under its approved bundling program, by imputing revenue at maximum rates or otherwise.

(3) The commission may not modify the provisions of a program under this section except upon complaint or the commission's own motion, wherein the commission finds, after hearing, that one or more aspects of the program are unduly preferential, unjustly discriminatory, or not just and reasonable.

Sec. 52. (1) Except as provided in sections 57-1301 to 57-1307 as those statutes govern jurisdictional utilities and metropolitan utilities districts, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.

(2) This section shall not apply in any area in which two or more jurisdictional utilities share authority to provide natural gas within the same territory under franchises issued by the same city.

Sec. 53. (1) Except as provided in subsection (2) of this section, no jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the commission that public convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in this state.

(2) A jurisdictional utility transacting business in this state shall be issued a certificate of convenience based upon its natural gas

service as of the effective date of this act.

(3) Every jurisdictional utility shall be required to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility.

Sec. 54. (1) The commission shall allow jurisdictional utilities to implement and thereafter modify gas supply cost adjustment rate schedules that reflect increases or decreases in the cost of the utility's gas supply such as (a) federally regulated wholesale rates for energy delivered through interstate facilities, (b) direct costs for natural gas delivered, or (c) costs for fuel used in the manufacture of gas. Such costs may, in the discretion of the commission, include costs related to gas price volatility risk management activities, the costs of financial instruments purchased to hedge against gas price volatility, if prudent, and other relevant factors. Gas supply cost adjustment rate schedules in effect on the effective date of this act shall continue in effect until changed pursuant to the provisions of the State Natural Gas Regulation Act. In each such proceeding the burden of proof shall be upon the utility.

(2) Unless the commission otherwise orders and except as otherwise provided in this section, no change shall be made by any jurisdictional utility in any purchased gas adjustment schedule, except after thirty days' notice to the commission and to the public as provided in this section. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect, and by publication in a newspaper of general circulation of notice to ratepayers affected by such change. The utility may propose and the commission, for good cause shown, may allow changes without requiring the thirty days' notice, by an order specifying the changes to be made and the time when they shall take effect and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge to ratepayers, such proposed change shall be plainly indicated on the new schedule filed with the commission.

(3) The commission may modify a jurisdictional utility's gas supply cost adjustment rate schedule under procedures specified in the act for setting rates by order of the commission.

(4) Once annually, the commission may initiate public hearings, upon complaint, to determine whether the gas supply cost adjustment schedule of a jurisdictional utility reflects the costs of the utility's gas supply and whether such costs were prudently incurred and to reconcile any amounts collected from ratepayers with the actual costs of gas supplies incurred by the utility.

(5) Any refund, including interest thereon, if any, received by the jurisdictional utility with respect to services purchased under Federal Energy Regulatory Commission natural gas tariff related to increased rates paid by the utility subject to refund, and applicable to natural gas services purchased for service to Nebraska ratepayers, shall be passed along to presently served Nebraska ratepayers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the utility, not to exceed twelve months, or by a cash refund at the option of the utility. The utility shall not be required to return such refunds to ratepayers served at competitively set or negotiated rates, or under alternative rate mechanisms, when the ratepayer is paying less than the full rate determined pursuant to the gas supply cost adjustment rate schedule, or under a customer choice or unbundling program.

(6) The provisions of this section shall not be construed to modify or otherwise restrict the Public Service Commission's authority to establish alternative rate mechanisms as authorized by the act, when such mechanisms modify a utility's recovery of gas supply costs.

Sec. 55. The commission may authorize, consistent with general regulatory principles, including, but not limited to (1) banded rates with a minimum and maximum rate that allows the jurisdictional utility to offer ratepayers rates within the rate band for the purpose of attracting additional natural gas service demand or to retain such demand, (2) mechanisms for the determination of rates by negotiation, and (3) customer choice and other programs to be offered by a natural gas public utility to unbundle one or more elements of the service provided by the utility.

Sec. 56. A jurisdictional utility shall not be required to obtain prior approval from the commission to begin the construction of any new plant, equipment, property, or facility that the utility determines to be necessary to provide adequate and reliable service to ratepayers.

Sec. 57. The rights and remedies given by the State Natural Gas

Regulation Act shall be construed as cumulative of all other laws in force in this state relating to jurisdictional utilities and shall not repeal any other remedies or rights now existing in this state for the enforcement of the duties and obligations of jurisdictional utilities or the rights of the commission to regulate and control the same except where inconsistent with the act.

Sec. 58. Section 57-705, Revised Statutes Supplement, 2002, is amended to read:

57-705. (1) All severance taxes levied by Chapter 57, article 7, shall be paid to the Tax Commissioner. He or she shall remit all such money received to the State Treasurer. All such money received by the State Treasurer shall be credited to a fund to be known as the Severance Tax Fund. An amount equal to one percent of the gross severance tax receipts, excluding those receipts from tax derived from oil and natural gas severed from school lands, credited to the fund shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the Severance Tax Administration Fund to be used for the expenses of administering Chapter 57, article 7. The balance of the Severance Tax Fund received from school lands shall be credited by the State Treasurer, upon the first day of each month, and shall inure to the permanent school fund.

(2) Of the balance of the Severance Tax Fund received from other than school lands (a) the Legislature may transfer an amount to be determined by the Legislature through the appropriations process up to three hundred thousand dollars for each year to the State Energy Office Cash Fund, (b) the Legislature may transfer an amount to be determined by the Legislature through the appropriations process up to thirty thousand dollars for each year to the ~~Governor's Policy Research Office~~ Public Service Commission for administration of the ~~Municipal Natural Gas Regulation Revolving Loan Fund~~ Municipal Rate Negotiations Revolving Loan Fund, and (c) ~~on August 1, 2000, the State Treasurer shall transfer one hundred thousand dollars to a cash fund to be administratively created under the Legislative Council for the purpose of conducting the study authorized by subsection (5) of section 19-4617, and (d) the remainder shall be credited and inure to the permanent school fund.~~

~~(3) Any funds transferred pursuant to subdivision (2)(c) of this section which are not expended by June 30, 2001, shall be credited to the permanent school fund.~~

Sec. 59. Section 59-1617, Revised Statutes Supplement, 2002, is amended to read:

59-1617. (1) Except as provided in subsection (2) of this section, the Consumer Protection Act shall not apply to actions or transactions otherwise permitted, prohibited, or regulated under laws administered by the Director of Insurance, the Public Service Commission, the Federal Energy Regulatory Commission, or any other regulatory body or officer acting under statutory authority of this state or the United States. The Consumer Protection Act and federal antitrust laws shall not extend to or apply to (a) any actions or transactions on the part of any municipality or group of municipalities while engaged in regulating natural gas rates pursuant to the ~~Municipal Natural Gas Regulation Act~~ State Natural Gas Regulation Act or section 16-679 or 17-528.02 or as otherwise permitted by law or (b) any actions or transactions on the part of any public power and irrigation district, public power district, electric membership association, or joint authority created pursuant to the Joint Public Power Authority Act or of any agency created pursuant to the Municipal Cooperative Financing Act, cooperative, or municipality engaged in furnishing electrical service to customers at retail or wholesale if such actions or transactions are otherwise permitted by law.

(2) Actions and transactions prohibited or regulated under the laws administered by the Director of Insurance shall be subject to section 59-1602 and all statutes which provide for the implementation and enforcement of section 59-1602. Actions and transactions prohibited or regulated under the laws administered by the Board of Funeral Directing and Embalming or administered by the Department of Agriculture and actions and transactions relating to loan brokers which are prohibited or regulated pursuant to sections 45-189 to 45-191.11 and administered by the Department of Banking and Finance shall be subject to the Consumer Protection Act.

No penalty or remedy shall result from a violation of the Consumer Protection Act except as expressly provided in such act.

Sec. 60. Section 75-101, Revised Statutes Supplement, 2002, is amended to read:

75-101. (1) The members of the Public Service Commission shall be resident citizens of this state, registered voters, and, if members of or practitioners in any profession, in good standing according to the established

standards of such profession. The members of the Public Service Commission shall be elected as provided in section 32-509. A candidate for the office of public service commissioner shall be a resident of the district from which he or she seeks election. Each public service commissioner shall be a resident of the district from which he or she is elected. Removal from the district shall cause a vacancy in the office of public service commissioner for the unexpired term.

(2) No person shall be eligible to the office of public service commissioner who is directly or indirectly interested in any common carrier or jurisdictional utility in the state or out of it or who is in any way or manner pecuniarily interested in any common carrier subject to Chapter 75 or 86. If any commissioner becomes so interested after election or appointment, his or her office shall become vacant, except that if any commissioner becomes so interested otherwise than voluntarily, he or she shall, within a reasonable time, divest himself or herself of such interest, and failing to do so, his or her office shall become vacant.

(3) A commissioner shall not hold any other office under the government of the United States, of this state, or of any other state and shall not, while such commissioner, engage in any other occupation.

For purposes of Chapter 75:

(a) Commission, when referring to a state agency, means the Public Service Commission; and

(b) Commissioner means a member of the commission.

Sec. 61. Section 75-102, Reissue Revised Statutes of Nebraska, is amended to read:

75-102. Before entering upon the duties of his office, each of the commissioners shall take and subscribe to the oath of office prescribed in the Constitution, of Nebraska and shall, in addition thereto, swear that he or she is not directly or indirectly interested in any common carrier or jurisdictional utility, subject to the provisions of ~~this chapter~~ Chapter 75, nor in the bonds, stock, mortgages, securities, contracts, or earnings of any such common carrier or jurisdictional utility, and that he or she will, to the best of his or her ability, faithfully and justly execute and enforce the duties devolving upon him or her as such commissioner, which oath shall be filed with the Secretary of State.

Sec. 62. Section 75-109, Revised Statutes Supplement, 2002, is amended to read:

75-109. Except as provided in the Agricultural Suppliers Lease Protection Act and sections ~~19-4603~~, 86-124, and 86-143, the commission shall regulate and exercise general control as provided by law over all common and contract carriers engaged in the transportation of freight or passengers for hire or furnishing telecommunications services for hire in Nebraska intrastate commerce.

Sec. 63. Section 75-109.01, Revised Statutes Supplement, 2002, is amended to read:

75-109.01. Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

(1) Common carriers, generally, pursuant to sections 75-101 to 75-158;

(2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;

(3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

(4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;

(5) Motor carrier registration and safety pursuant to sections 75-301 to 75-322, 75-369.03, 75-370, 75-371, 75-383, and 75-384;

(6) Pipeline carriers and rights-of-way pursuant to sections 57-1301 to 57-1307 and 75-501 to 75-503;

(7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

(8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724; ~~and~~

(10) Water service pursuant to the Water Service Regulation Act; and

(11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Sec. 64. Section 75-110.01, Reissue Revised Statutes of Nebraska, is amended to read:

75-110.01. A summary of the authority or relief sought in an application or petition shall be set out in the notice given according to the rules the commission shall adopt. After notice of an application or petition has been given as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed. The commission shall not deny an application or petition of a common carrier or jurisdictional utility until after it has either given the applicant a hearing thereon, or received the applicant's affidavits and made them a part of the record.

Sec. 65. Section 75-112, Reissue Revised Statutes of Nebraska, is amended to read:

75-112. The commissioners and examiners, for the purposes mentioned in sections 75-101 to 75-801 and the State Natural Gas Regulation Act, may administer oaths, compel the attendance of witnesses, examine any of the books, papers, documents, and records of any motor carrier or regulated motor carrier as defined in section 75-302 or common carrier subject to sections 75-101 to 75-801 or jurisdictional utility or have such examination made by any person that the commission may employ for that purpose, compel the production of such books, papers, documents, and records, or examine under oath or otherwise any officer, director, agent, or employee of any such carrier or jurisdictional utility or any other person. Any person employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination. The commissioners may certify to all official acts of the commission.

Sec. 66. Section 75-118, Reissue Revised Statutes of Nebraska, is amended to read:

75-118. The commission shall:

(1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of household goods and passengers by any common carrier in Nebraska intrastate commerce;

(2) Make all necessary classifications of household goods that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;

(3) Prevent and correct the unjust discriminations set forth in section 75-126; and

(4) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General; and

(5) Enforce the State Natural Gas Regulation Act.

Sec. 67. Section 75-122.01, Revised Statutes Supplement, 2002, is amended to read:

75-122.01. Except as otherwise provided in section 75-134 and the State Natural Gas Regulation Act, the district courts shall have jurisdiction to enjoin a commission order only when the order was not entered (1) in accordance with Chapter 75 or 86 and the commission's rules and regulations adopted and promulgated pursuant to such chapters or (2) in accordance with other statutory authority underlying the commission's order.

Sec. 68. Section 75-128, Revised Statutes Supplement, 2002, is amended to read:

75-128. (1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in section 75-121 and except for good cause shown, a decision of the

commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonfarming proceedings.

(2) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

(3) For each application, complaint, or petition filed with the commission, except those filed under sections 75-301 to 75-322 or the State Natural Gas Regulation Act, there shall be charged a filing fee to be determined by the commission, but in an amount not to exceed the sum of fifty dollars payable at the time of such filing. There shall also be charged to persons regulated by the commission, except persons regulated under the State Natural Gas Regulation Act, a hearing fee of fifty dollars for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

Sec. 69. Section 75-129, Reissue Revised Statutes of Nebraska, is amended to read:

75-129. The commission may hold sessions at any place in the state when deemed necessary to facilitate the discharge of its duties, and may conduct the hearing and other proceedings provided for in sections 75-101 to 75-801, in the State Natural Gas Regulation Act, or under any other law of this state, at such place or places in the state as may, in the judgment of the commission, be the most convenient and practicable for determining the particular matter before the commission.

Sec. 70. Section 75-131, Reissue Revised Statutes of Nebraska, is amended to read:

75-131. Any person who complains of anything done or omitted to be done by any common or contract carrier or jurisdictional utility may request that the commission investigate and impose sanctions on such carrier or jurisdictional utility by filing a petition which briefly states the facts constituting the complaint. Notice of the complaint shall be served upon the respondent carrier or utility as in civil cases in district court, and the respondent shall be required to answer or satisfy the complaint within a reasonable time fixed by the commission. This section shall not prevent any person from proceeding against any common or contract carrier or utility under the laws of this state for such cases made and provided.

Sec. 71. Section 75-132, Reissue Revised Statutes of Nebraska, is amended to read:

75-132. If a carrier or jurisdictional utility does not satisfy a complaint filed pursuant to section 75-131 within the time allowed and there appears to be a reasonable ground for investigation of the complaint upon its merits, the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing. After the hearing, the commission shall make such order with respect to the complaint as it deems just and reasonable. Such order must be consistent with the statutory authority that formed the basis for the complaint.

Sec. 72. Section 75-139.01, Revised Statutes Supplement, 2002, is amended to read:

75-139.01. For purposes of sections 75-101 to 75-158, person shall mean any individual, corporation, governmental agency or subdivision, partnership, limited liability company, company, or association and any other legal or commercial entity, including any common or contract carrier or jurisdictional utility and its owners, directors, officers, limited liability company members, agents, and employees.

Sec. 73. Section 75-156, Revised Statutes Supplement, 2002, is amended to read:

75-156. (1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, or contract carrier for each violation of (a) any provision of sections 75-301 to 75-390 administered by the commission or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390, (b) a commission order entered pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, or the Telecommunications Relay System Act, (c) any term, condition, or limitation of any certificate or permit issued by the

commission pursuant to sections 75-301 to 75-390, or (d) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to sections 75-301 to 75-390. The civil penalty assessed under this section shall not exceed two million dollars per year for each violation. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section, except an order assessing a civil penalty issued under subdivision (1)(b) of this section, has the rights of appeal set forth in section 75-136.01. For an order assessing a civil penalty issued under subdivision (1)(b) of this section, any party aggrieved may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

~~(3)~~ (4) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

Sec. 74. Section 84-612, Revised Statutes Supplement, 2002, is amended to read:

84-612. (1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) On July 23, 2001, the State Treasurer shall transfer three hundred seventy thousand dollars from the Cash Reserve Fund to the Municipal Natural Gas Regulation Revolving Loan Fund for purposes of loaning to Nebraska communities that seek to review natural gas rates. Any transfer made pursuant to this subsection shall be reversed upon notification by the Director of Policy Research that a sufficient court judgment has been obtained. Upon

reversal, any money in excess of three hundred seventy thousand dollars shall be transferred to the Municipal Rate Negotiations Revolving Loan Fund.

(4) Within fifteen days after July 1, 2002, the State Treasurer shall transfer twenty-two million five hundred thousand dollars from the Cash Reserve Fund to the General Fund.

(5) On June 16, 2003, the State Treasurer shall transfer sixty-four million nine hundred thousand dollars from the Cash Reserve Fund to the General Fund.

(6) On June 15, 2005, the State Treasurer shall transfer twenty-two million five hundred thousand dollars from the General Fund to the Cash Reserve Fund.

Sec. 75. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 76. Original sections 75-102, 75-110.01, 75-112, 75-118, 75-129, 75-131, and 75-132, Reissue Revised Statutes of Nebraska, and sections 57-705, 59-1617, 75-101, 75-109, 75-109.01, 75-122.01, 75-128, 75-139.01, 75-156, and 84-612, Revised Statutes Supplement, 2002, are repealed.

Sec. 77. The following sections are outright repealed: Sections 19-4601 to 19-4616 and 19-4618 to 19-4623, Reissue Revised Statutes of Nebraska, and section 19-4617, Revised Statutes Supplement, 2002.

Sec. 78. Since an emergency exists, this act takes effect when passed and approved according to law.