

Assembly Bill No. 369--Select Committee on Energy

CHAPTER.....

AN ACT relating to utilities; revising and repealing various provisions governing the regulation of public utilities; preventing certain electric utilities from disposing of certain generation assets for a certain period; placing restrictions on the disposal of such assets after that period; requiring certain electric utilities to use deferred accounting under certain circumstances; repealing provisions pertaining to the competitive provision of retail electric service; requiring the public utilities commission of Nevada to take certain actions to carry out the provisions of this act; establishing certain requirements and making various changes relating to the rates charged by certain electric utilities; requiring certain entities to obtain approval from the commission before carrying out certain transactions; and providing other matters properly relating thereto.

WHEREAS, In 1997, the legislature enacted comprehensive legislation designed to prepare the electric industry in this state for retail competition; and

WHEREAS, In 1999, the legislature enacted additional legislation delaying the onset of such competition until March 1, 2000, unless a determination was made that a later date was necessary to protect the public interest; and

WHEREAS, On several occasions, a determination has been made that commencement of retail competition in the electric industry is not yet in the public interest of this state; and

WHEREAS, Many residents of this state are senior citizens whose health is especially vulnerable to extreme heat and extreme cold and who rely on electricity to provide safe temperatures in their homes; and

WHEREAS, In arid regions of this state, there are many population centers that cannot be sustained without electricity to pump potable drinking water; and

WHEREAS, Several of the major industries in this state are particularly dependent upon electricity; and

WHEREAS, Under present market conditions in the electric industry, comprehensive and effective regulation of electric utilities in this state is vital to the economy of this state and is essential to protect the health, safety and welfare of the residents of this state; and

WHEREAS, Until present market conditions have changed and adequate mechanisms have been developed to allow this state to adjust its comprehensive regulation of electric utilities in Nevada, this state has a compelling interest in continuing its comprehensive regulation of electric utilities to protect the consumers in this state, to safeguard the economy of this state and to ensure that the electric utilities in this state provide adequate and reliable electric service at just and reasonable prices; and

WHEREAS, As part of its comprehensive regulation of electric utilities in Nevada, this state has traditionally exercised its inherent jurisdiction over electric generation assets which have been dedicated to serve the public convenience and necessity in Nevada and which are used and useful for the convenience of the public in Nevada; and

WHEREAS, To control volatility in the price of electricity in the retail market and to ensure that the electric utilities in this state have necessary and sufficient resources to provide adequate and reliable electric service under present market conditions, this state must retain its traditional

jurisdiction and control over electric generation assets until other mechanisms are available to accomplish these goals; and

WHEREAS, In recent years, the western United States has experienced a severe and ongoing crisis in the electric industry marked by critical shortages in the supply of electricity and extreme volatility in the price of electricity in the wholesale and retail markets; and

WHEREAS, The severe and ongoing crisis in the electric industry in the western United States is both an immediate threat and a continuing danger to the economy of this state and to the health, safety and welfare of the residents of this state; and

WHEREAS, Until the severe and ongoing crisis in the electric industry in the western United States has sufficiently abated, this state must maintain its comprehensive regulation over electric utilities and its traditionally broad jurisdiction and control over electric generation assets to promote stability and predictability in the electric industry, to foster confidence in the financial markets, to ensure that consumers have adequate and reliable electric service and to protect the public from unjust and unreasonable utility rates; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 703.010 is hereby amended to read as follows:

703.010 As used in this chapter, unless the context otherwise requires:

1. "Alternative seller" ~~has the meaning ascribed to it in NRS 704.967.~~ *means a person who sells any competitive, discretionary or potentially competitive component of natural gas service pursuant to NRS 704.993 to 704.999, inclusive.*

2. "Commission" means the public utilities commission of Nevada.

Sec. 2. NRS 703.025 is hereby amended to read as follows:

703.025 1. The commission, by majority vote, shall organize the commission into sections, alter the organization of the commission and reassign responsibilities and duties of the sections of the commission as the commission deems necessary to provide:

(a) Advice and guidance to the commission on economic policies relating to utilities under the jurisdiction of the commission, and the regulation of such utilities;

(b) Administrative, technical, legal and support services to the commission; and

(c) For the regulation of utilities governed by the commission and the services offered by such utilities, including, but not limited to, licensing of such utilities and services and the resolution of consumer complaints.

2. The commission shall:

(a) Formulate the policies of the various sections of the commission;

(b) Coordinate the activities of the various sections of the commission;

(c) ~~Take such~~ *If customers are authorized by a specific statute to obtain a competitive, discretionary or potentially competitive utility service, take any* actions *which are* consistent with ~~law as~~ *the statute and which* are necessary to encourage and enhance:

(1) A competitive market for the provision of *that* utility ~~{services}~~ *service* to customers in this state; and

(2) The reliability and safety of the provision of ~~{those services}~~ *that utility service* within that competitive market; and

(d) Adopt such regulations consistent with law as the commission deems necessary for the operation of the commission and the enforcement of all laws administered by the commission.

3. Before reorganizing the commission, the commission shall submit the plan for reorganization to:

(a) The director of the legislative counsel bureau for transmittal to the appropriate legislative committee and the interim finance committee; and

(b) The director of the department of administration.

Sec. 3. NRS 703.130 is hereby amended to read as follows:

703.130 1. The commission shall appoint a deputy commissioner who shall serve in the unclassified service of the state.

2. The commission shall appoint a secretary who shall perform such administrative and other duties as are prescribed by the commission. The commission shall also appoint an assistant secretary.

3. The commission may employ such other clerks, experts or engineers as may be necessary.

4. ~~{The commission may}~~ *Except as otherwise provided in subsection 5, the commission:*

(a) *May* appoint one or more hearing officers for a period specified by the commission to conduct proceedings or hearings that may be conducted by the commission pursuant to chapters 704, 704A, 705, 708 and 711 of NRS. ~~{The commission shall}~~

(b) *Shall* prescribe by regulation the procedure for appealing a decision of a hearing officer to the commission.

5. The commission shall not appoint a hearing officer to conduct proceedings or hearings pursuant to sections 8 to 18, inclusive, of this act.

Sec. 4. NRS 703.151 is hereby amended to read as follows:

703.151 In adopting regulations pursuant to this Title relating to the provision of electric service, the commission shall ensure that the regulations:

1. ~~{Maximize the benefits of a competitive marketplace for the provision of electric services;~~

~~2. Maintain, to the extent possible, even and fair competition among providers of electric service;~~

~~3. Ensure the flexibility necessary for existing utilities that provide energy to enter into a deregulated market;~~

~~4. Foster innovation in the provision of electric services;~~

~~5. Ensure and enhance reliability and safety in the provision of electric services;~~

~~6. Provide for flexible mechanisms for regulating electric services; and~~

~~7.} *Protect, further and serve the public interest;*~~

2. Provide effective protection ~~{of persons}~~ *for customers* who depend upon electric ~~{services}~~ *service*;

3. *Provide for stability in rates and for the availability and reliability of electric service;*

4. *Encourage the development and use of renewable energy resources; and*

5. *Require providers of electric service to engage in prudent business management, effective long-term planning, responsible decision making, sound fiscal strategies and efficient operations.*

Sec. 5. NRS 703.320 is hereby amended to read as follows:

703.320 1. ~~When, in~~ *In* any matter pending before the commission, *if* a hearing is required by ~~law,~~ *a specific statute* or is ~~normally~~ *otherwise* required by the commission, the commission shall give notice of the pendency of the matter to all persons entitled to notice of the hearing. The commission shall by regulation specify:

(a) The manner of giving notice ~~+~~ *in each type of proceeding*; and
(b) ~~Where not specified by law, the~~ *The* persons entitled to notice in each type of proceeding.

2. ~~Unless,~~ *The commission shall not dispense with a hearing in any matter pending before the commission pursuant to sections 8 to 18, inclusive, of this act.*

3. *In any other matter pending before the commission, the commission may dispense with a hearing and act upon the matter pending unless,* within 10 days after the date of the notice of pendency, a person entitled to notice of the hearing files with the commission a request that the hearing be held . ~~+, the commission may dispense with a hearing and act upon the matter pending.~~

~~—3.+~~ *If such* a request for a hearing is filed, the commission shall give at least 10 days' notice of the hearing.

Sec. 6. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 19, inclusive, of this act.

Sec. 7. *As used in this section and NRS 704.330 to 704.430, inclusive, unless the context otherwise requires, "electric utility" has the meaning ascribed to it in section 12 of this act.*

Sec. 8. *As used in sections 8 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 9 to 15, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 9. *"Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with an electric utility.*

Sec. 10. *"Consumer's advocate" means the consumer's advocate of the bureau of consumer protection in the office of the attorney general.*

Sec. 11. *"Dispose of a generation asset" means to:*

1. *Sell, lease, assign, transfer or divest an interest in a generation asset, in whole or in part, to another person; or*

2. *Perform any promise, covenant or obligation to sell, lease, assign, transfer or divest an interest in a generation asset, in whole or in part, to another person pursuant to the terms of a contract or agreement executed before, on or after the effective date of this act unless, before the effective date of this act:*

(a) *All terms and conditions of the contract or agreement were satisfied; and*

(b) All parties to the contract or agreement fully performed all promises, covenants and obligations under the contract or agreement.

Sec. 12. 1. “Electric utility” means:

(a) Any public utility or successor in interest that:

(1) Is in the business of providing electric service to customers;

(2) Holds a certificate of public convenience and necessity issued or transferred pursuant to this chapter; and

(3) In the most recently completed calendar year or in any other calendar year within the 7 calendar years immediately preceding the most recently completed calendar year, had a gross operating revenue of \$250,000,000 or more in this state;

(b) A subsidiary or affiliate of such a public utility;

(c) A holding company or other person that holds a controlling interest in such a public utility; and

(d) A successor in interest to any public utility, subsidiary, affiliate, holding company or person described in paragraph (a), (b) or (c).

2. The term does not include a cooperative association, nonprofit corporation, nonprofit association or provider of electric service which is declared to be a public utility pursuant to NRS 704.673 and which provides service only to its members.

Sec. 13. 1. “Generation asset” means any plant, facility, equipment or system that:

(a) Converts other forms of energy into electricity or otherwise produces electricity;

(b) Is or was owned, possessed, controlled, leased, operated, administered, maintained, acquired or placed into service by an electric utility before, on or after January 1, 2001;

(c) Is subject, in whole or in part, to regulation by the commission; and

(d) Is used and useful for the convenience of the public in this state, as determined by the commission.

2. The term does not include:

(a) Any hydroelectric plant, facility, equipment or system which has a generating capacity of not more than 15 megawatts and which is located on the Truckee River or on a waterway that is appurtenant to or connected to the Truckee River.

(b) Any net metering system, as defined in NRS 704.771.

Sec. 14. 1. “Interest in a generation asset” means any interest, in whole or in part, in the physical plant, facility, equipment or system that makes up the generation asset, whether such interest is legal or equitable, present or future, or contingent or vested.

2. The term does not include any interest in the electricity or other energy produced by the generation asset.

Sec. 15. “Person” means:

1. A natural person;

2. Any form of business or social organization and any other nongovernmental legal entity, including, without limitation, a corporation, partnership, association, trust or unincorporated organization;

3. *A government or an agency or instrumentality of a government, including, without limitation, this state or an agency or instrumentality of this state; and*

4. *A political subdivision of this state or of any other government or an agency or instrumentality of a political subdivision of this state or of any other government.*

Sec. 16. *Except as otherwise provided in section 17 of this act:*

1. *Before July 1, 2003, an electric utility shall not dispose of a generation asset.*

2. *On or after July 1, 2003, an electric utility shall not dispose of a generation asset unless, before the disposal, the commission approves the disposal by a written order issued in accordance with the provisions of this section.*

3. *Not sooner than January 1, 2003, an electric utility may file with the commission an application to dispose of a generation asset on or after July 1, 2003. If an electric utility files such an application, the commission shall not approve the application unless the commission finds that the disposal of the generation asset will be in the public interest. The commission shall issue a written order approving or disapproving the application. The commission may base its approval of the application upon such terms, conditions or modifications as the commission deems appropriate.*

4. *If an electric utility files an application to dispose of a generation asset, the consumer's advocate shall be deemed a party of record.*

5. *If the commission approves an application to dispose of a generation asset before July 1, 2003, the order of the commission approving the application:*

(a) *May not become effective sooner than July 1, 2003;*

(b) *Does not create any vested rights before the effective date of the order; and*

(c) *For the purposes of NRS 703.373, shall be deemed a final decision on the date on which the order is issued by the commission.*

Sec. 17. 1. *An electric utility may dispose of its generation assets pursuant to a merger, acquisition or transaction that is authorized pursuant to NRS 704.329 or pursuant to a transfer of its certificate of public convenience and necessity that is authorized pursuant to NRS 704.410, if:*

(a) *The electric utility disposes of substantially all of its generation assets and substantially all of its other assets to the other person in the merger, acquisition, transaction or transfer; and*

(b) *The other person in the merger, acquisition, transaction or transfer is not a subsidiary or affiliate of the electric utility or a holding company or other person that holds a controlling interest in the electric utility.*

2. *Any person who assumes or has assumed ownership, possession, control, operation, administration or maintenance of a generation asset pursuant to a merger, acquisition, transaction or transfer described in subsection 1 is subject to the provisions of sections 8 to 18, inclusive, of this act.*

Sec. 18. *If an electric utility disposes of a generation asset in violation of sections 8 to 18, inclusive, of this act, the disposal is void and unenforceable and is not valid for any purpose.*

Sec. 19. *1. Except as otherwise provided in section 36 of this act, beginning on March 1, 2001, an electric utility that purchases fuel or power shall use deferred accounting by recording upon its books and records in deferred accounts all increases and decreases in costs for purchased fuel and purchased power that are prudently incurred by the electric utility.*

2. An electric utility using deferred accounting shall include in its annual report to the commission a statement showing, for the period of recovery, the allocated rate of return for each of its operating departments in this state using deferred accounting. If, during the period of recovery, the rate of return for any operating department using deferred accounting is greater than the rate of return authorized by the commission in the most recently completed rate proceeding for the electric utility, the commission shall order the electric utility that recovered costs for purchased fuel or purchased power through its rates during the reported period to transfer to the next energy adjustment period that portion of the amount recovered by the electric utility that exceeds the authorized rate of return.

3. Except as otherwise provided in subsection 4, an electric utility using deferred accounting shall file an application to clear its deferred accounts after the end of each 12-month period of deferred accounting.

4. An electric utility using deferred accounting may file an application to clear its deferred accounts after the end of a 6-month period of deferred accounting if the net increase or decrease in revenues necessary to clear its deferred accounts for the 6-month period is more than 5 percent of the total revenues generated by the electric utility during that period from its rates for purchased fuel and purchased power most recently authorized by the commission.

5. The commission shall adopt regulations prescribing the period within which an electric utility must file an application to clear its deferred accounts after the end of a period of deferred accounting.

6. As used in this section:

(a) "Application to clear its deferred accounts" means an application filed by an electric utility pursuant to this section and subsection 7 of NRS 704.110.

(b) "Costs for purchased fuel and purchased power" means all costs which are prudently incurred by an electric utility and which are required to purchase fuel, to purchase capacity and to purchase energy. The term does not include any costs that the commission determines are not recoverable pursuant to subsection 8 of NRS 704.110.

(c) "Electric utility" means any public utility or successor in interest that:

(1) Is in the business of providing electric service to customers;

(2) Holds a certificate of public convenience and necessity issued or transferred pursuant to this chapter; and

(3) In the most recently completed calendar year or in any other calendar year within the 7 calendar years immediately preceding the

most recently completed calendar year, had a gross operating revenue of \$250,000,000 or more in this state.

The term does not include a cooperative association, nonprofit corporation, nonprofit association or provider of electric service which is declared to be a public utility pursuant to NRS 704.673 and which provides service only to its members.

Sec. 20. NRS 704.030 is hereby amended to read as follows:

704.030 “Public utility” or “utility” does not include:

1. Persons engaged in the production and sale of natural gas, other than sales to the public, or engaged in the transmission of natural gas other than as a common carrier transmission or distribution line or system.

2. Persons engaged in the business of furnishing, for compensation, water or services for the disposal of sewage, or both, to persons within this state if:

(a) They serve 25 persons or less; and

(b) Their gross sales for water or services for the disposal of sewage, or both, amounted to \$5,000 or less during the immediately preceding 12 months.

3. Persons not otherwise engaged in the business of furnishing, producing or selling water or services for the disposal of sewage, or both, but who sell or furnish water or services for the disposal of sewage, or both, as an accommodation in an area where water or services for the disposal of sewage, or both, are not available from a public utility, cooperative corporations and associations or political subdivisions engaged in the business of furnishing water or services for the disposal of sewage, or both, for compensation, to persons within the political subdivision.

4. Persons who are engaged in the production and sale of energy, including electricity, to public utilities, cities, counties or other entities which are reselling the energy to the public.

5. Persons who are subject to the provisions of NRS 590.465 to 590.645, inclusive.

6. Persons who are engaged in the sale or use of special fuel as defined in NRS 366.060.

7. ~~Persons who are licensed as alternative sellers to provide electric services.~~

~~—8.—~~ Persons who provide water from water storage, transmission and treatment facilities if those facilities are for the storage, transmission or treatment of water from mining operations.

Sec. 21. NRS 704.110 is hereby amended to read as follows:

704.110 Except as otherwise provided in NRS 704.075 or as otherwise provided by the commission pursuant to NRS 704.095 or 704.097:

1. Whenever there is filed with the commission any schedule stating a new or revised individual or joint rate or charge, or any new or revised individual or joint regulation or practice affecting any rate or charge, or any schedule resulting in a discontinuance, modification or restriction of service, the commission may, upon complaint or upon its own motion without complaint, at once, without answer or formal pleading by the interested utility, investigate or, upon reasonable notice, conduct a hearing concerning the propriety of the rate, charge, classification, regulation, discontinuance, modification, restriction or practice.

2. Pending the investigation or hearing and the decision thereon, the commission, upon delivering to the utility affected thereby a statement in writing of its reasons for the suspension, may suspend the operation of the schedule and defer the use of the rate, charge, classification, regulation, discontinuance, modification, restriction or practice . ~~but~~ *If the rate, charge, classification, regulation, discontinuance, modification, restriction or practice is part of:*

(a) A filing made pursuant to subsection 7, the suspension must not be effective for more than 90 days beyond the time when the rate, charge, classification, regulation, discontinuance, modification, restriction or practice would otherwise go into effect.

(b) Any other filing made pursuant to this section, the suspension must not be effective for more than 150 days beyond the time when the rate, charge, classification, regulation, discontinuance, modification, restriction or practice would otherwise go into effect.

3. Whenever there is filed with the commission any schedule stating an increased individual or joint rate or charge for service or equipment, the public utility shall submit with its application a statement showing the recorded results of revenues, expenses, investments and costs of capital for its most recent 12 months for which data were available when the application was prepared. During any hearing concerning the increased rates or charges determined by the commission to be necessary, the commission shall consider evidence in support of the increased rates or charges based upon actual recorded results of operations for the same 12 months, adjusted for increased revenues, any increased investment in facilities, increased expenses for depreciation, certain other operating expenses as approved by the commission and changes in the costs of securities which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within 6 months after the last month of those 12 months, but no new rates or charges may be placed into effect until the changes have been experienced and certified by the utility to the commission. The commission shall also consider evidence supporting expenses for depreciation, calculated on an annual basis, applicable to major components of the public utility's plant placed into service during the recorded test period or the period for certification as set forth in the application. Adjustments to revenues, operating expenses and costs of securities must be calculated on an annual basis. Within 90 days after the filing with the commission of the certification required in this subsection, or before the expiration of any period of suspension ordered pursuant to subsection 2, whichever time is longer, the commission shall make such order in reference to those rates or charges as is required by this chapter. *An electric utility shall file a general rate application pursuant to this subsection at least once every 24 months.*

4. After full investigation or hearing, whether completed before or after the date upon which the rate, charge, classification, regulation, discontinuance, modification, restriction or practice is to go into effect, the commission may make such order in reference to the rate, charge, classification, regulation, discontinuance, modification, restriction or practice as would be proper in a proceeding initiated after the rate, charge,

classification, regulation, discontinuance, modification, restriction or practice has become effective.

5. Except as otherwise provided in subsection 6, whenever a general rate application for an increased rate or charge for, or classification, regulation, discontinuance, modification, restriction or practice involving service or equipment has been filed with the commission, a public utility shall not submit another general rate application until all pending general rate applications for increases in rates submitted by that public utility have been decided unless, after application and hearing, the commission determines that a substantial financial emergency would exist if the other application is not permitted to be submitted sooner.

6. A public utility may ~~not~~ file an application to recover the increased cost of purchased fuel, purchased power, or natural gas purchased for resale ~~more often than~~ once every 30 days. *The provisions of this subsection do not apply to an electric utility using deferred accounting pursuant to section 19 of this act.*

7. *Except as otherwise provided in subsection 8, whenever an electric utility using deferred accounting pursuant to section 19 of this act files an application to clear its deferred accounts and to change one or more of its rates or charges based upon changes in the costs for purchased fuel or purchased power, the commission, after a public hearing and by an appropriate order:*

(a) Shall allow the electric utility to clear its deferred accounts by refunding any credit balance or recovering any debit balance over a period not to exceed 3 years, as determined by the commission.

(b) Shall not allow the electric utility to recover any debit balance, or portion thereof, in an amount that would result in a rate of return during the period of recovery that exceeds the rate of return authorized by the commission in the most recently completed rate proceeding for the electric utility.

8. *Before allowing an electric utility to clear its deferred accounts pursuant to subsection 7, the commission shall determine whether the costs for purchased fuel and purchased power that the electric utility recorded in its deferred accounts are recoverable and whether the revenues that the electric utility collected from customers in this state for purchased fuel and purchased power are properly recorded and credited in its deferred accounts. The commission shall not allow the electric utility to recover any costs for purchased fuel and purchased power that were the result of any practice or transaction that was undertaken, managed or performed imprudently by the electric utility.*

9. *Whenever an electric utility files an application to clear its deferred accounts pursuant to subsection 7 while a general rate application is pending, the electric utility shall:*

(a) Submit with its application to clear its deferred accounts information relating to the cost of service and rate design; and

(b) Supplement its general rate application with the same information, if such information was not submitted with the general rate application.

10. A utility facility identified in a 3-year plan submitted pursuant to NRS 704.741 and accepted by the commission for acquisition or construction pursuant to NRS 704.751 and the regulations adopted

pursuant thereto shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing such a facility.

11. As used in this section, "electric utility" has the meaning ascribed to it in section 19 of this act.

Sec. 22. NRS 704.329 is hereby amended to read as follows:

704.329 1. Except as otherwise provided in ~~subsection 4, no person may~~ *this section, a person shall not* merge with, *directly acquire, indirectly* acquire through a subsidiary or affiliate, or otherwise directly or indirectly obtain control of a public utility doing business in this state or an entity that holds a controlling interest in such a public utility without first submitting to the commission an application for authorization of the proposed *merger, acquisition or other* transaction and obtaining authorization from the commission. ~~pursuant to subsection 2.~~

2. Any merger, acquisition or ~~change in control in violation~~ *other transaction that violates the provisions* of this section *is void and unenforceable and* is not valid for any purpose.

~~2.~~ 3. Before authorizing ~~the~~ *a proposed* merger, acquisition or ~~change in control of a public utility doing business in this state,~~ *other transaction pursuant to this section,* the commission shall consider the effect of the proposed *merger, acquisition or other* transaction ~~on the public interest and the customers in this state. The commission shall not authorize the proposed merger, acquisition or other transaction unless the commission finds that the proposed merger, acquisition or change in control is~~ *other transaction:*

(a) *Will be* in the public interest ~~the commission shall authorize the proposed transaction.~~

~~3.~~ *; and*

(b) *Complies with the provisions of sections 8 to 18, inclusive, of this act, if the proposed merger, acquisition or other transaction is subject to those provisions.*

4. *The commission may base its authorization of the proposed merger, acquisition or other transaction upon such terms, conditions or modifications as the commission deems appropriate.*

5. If the commission does not issue a final ~~determination~~ *order* regarding the proposed *merger, acquisition or other* transaction within 180 days after the date on which an application or amended application for authorization of the proposed *merger, acquisition or other* transaction was filed with the commission, *and the proposed merger, acquisition or other transaction is not subject to the provisions of sections 8 to 18, inclusive, of this act,* the *proposed merger, acquisition or other* transaction shall be deemed ~~approved~~ *to be authorized by the commission.*

~~4.~~ 6. The provisions of this section do not apply to the transfer of stock of a public utility doing business in this state or to the transfer of the stock of an entity holding a controlling interest in such a public utility, if a transfer of not more than 25 percent of the common stock of such a public utility or entity is proposed.

Sec. 23. NRS 704.370 is hereby amended to read as follows:

704.370 1. The commission shall have the power, after hearing, to issue or refuse such certificate of public convenience, or to issue it for the

construction of a portion only of the contemplated line, plant or systems, or extension thereof, and may attach thereto such terms and conditions as, in its judgment, the public convenience and necessity may require.

2. ~~The~~ *Except as otherwise provided in subsection 3, the* commission, in its discretion ~~if~~ *and after investigation*, may dispense with the hearing on the application if, upon the expiration of the time fixed in the notice thereof, no protest against the granting of the ~~certificate~~ *application* has been filed by or on behalf of any interested person.

3. *The commission shall not dispense with the hearing on the application of an electric utility.*

Sec. 24. NRS 704.390 is hereby amended to read as follows:

704.390 1. It ~~shall be~~ *is* unlawful for any public utility to discontinue, modify or restrict service to any city, town, municipality, community or territory theretofore serviced by it, except upon 30 days' notice filed with the commission, specifying in detail the character and nature of the discontinuance or restriction of the service intended, and upon order of the commission, made after hearing, permitting such discontinuance, modification or restriction of service.

2. ~~The~~ *Except as otherwise provided in subsection 3, the* commission, in its discretion and after investigation, may dispense with the hearing on the application for discontinuance, modification or restriction of service ~~if~~ *if*, upon the expiration of the time fixed in the notice thereof, no protest against the granting of the application has been filed by or on behalf of any interested person.

3. *The commission shall not dispense with the hearing on the application of an electric utility.*

Sec. 25. NRS 704.410 is hereby amended to read as follows:

704.410 1. Any public utility subject to the provisions of NRS ~~704.005~~ *704.001* to 704.751, inclusive, *and sections 8 to 18, inclusive, of this act* to which a certificate of public convenience and necessity has been issued pursuant to NRS ~~704.005~~ *704.001* to 704.751, inclusive, *and sections 8 to 18, inclusive, of this act* may transfer the certificate to any person qualified under NRS ~~704.005~~ *704.001* to 704.751, inclusive, ~~but the~~ *and sections 8 to 18, inclusive, of this act. Such a* transfer is *void and unenforceable and is* not valid for any purpose ~~until a~~ *unless*:

(a) *A* joint application to make the transfer has been made to the commission by the transferor and the transferee ~~and the~~ *; and*

(b) *The* commission has authorized the substitution of the transferee for the transferor. *If the transferor is an electric utility, the commission shall not authorize the transfer unless the transfer complies with the provisions of sections 8 to 18, inclusive, of this act.*

2. The commission ~~may~~ *:*

(a) *Shall conduct a hearing on a transfer involving an electric utility. The hearing must be noticed and conducted in the same manner as other contested hearings before the commission.*

(b) *May* direct that a hearing be ~~had in the matter of the transfer~~ *conducted on a transfer involving any other public utility.* If the commission determines that *such* a hearing should be held, the hearing must be noticed and conducted in the same manner as other contested hearings before the commission.

~~{3. The commission has the sole discretion to direct that a hearing be held if the application seeks to transfer the certificate from a person or partners to a corporation when the officers of the corporation will be substantially the same person or partners.~~

~~4.~~ The commission may dispense with *such* a hearing if, upon the expiration of the time fixed in the notice thereof, no protest to the proposed transfer has been filed by or on behalf of any interested person.

~~{5.}~~ **3.** In determining whether the transfer of a certificate of public convenience and necessity to an applicant transferee should be authorized, the commission must take into consideration:

(a) The utility service performed by the transferor and the proposed utility service of the transferee;

(b) Other authorized utility services in the territory for which the transfer is sought; ~~{and}~~

(c) Whether the transferee is fit, willing and able to perform the services of a public utility and whether the proposed operation will be consistent with the legislative policies set forth in NRS ~~{704.005}~~ *704.001* to 704.751, inclusive ~~+~~

~~6.~~, *and sections 8 to 18, inclusive, of this act; and*

4. Whether the transfer will be in the public interest.

4. The commission may make such amendments, restrictions or modifications in a certificate upon transferring it as the public interest requires.

~~{7.}~~ **5.** No transfer is valid beyond the life of the certificate transferred.

Sec. 26. NRS 704.430 is hereby amended to read as follows:

704.430 1. Any person, firm, association or corporation who ~~{shall violate}~~ *violates* any provisions of NRS 704.330 to ~~{704.410.}~~ *704.430*, inclusive, *and section 7 of this act* shall be punished by a fine of not more than \$250.

2. Each day's operation without a certificate as provided in NRS 704.330 to ~~{704.410.}~~ *704.430*, inclusive, *and section 7 of this act* or each day that service is discontinued, modified or restricted, as defined in NRS 704.330 to ~~{704.410, inclusive, shall}~~ *704.430, inclusive, and section 7 of this act must* be considered a separate offense.

Sec. 27. NRS 704.961 is hereby amended to read as follows:

704.961 The commission ~~{shall expend up to \$500,000}~~ *may expend money* from its reserve account to provide education and informational services necessary to educate and inform the residents in this state on issues related to the provision of ~~{competitive}~~ utility services in this state. The commission ~~{shall}~~ *may* contract with an independent person to provide such educational and informational services.

Sec. 28. NRS 704.989 is hereby amended to read as follows:

704.989 1. The commission shall establish portfolio standards for domestic energy that ~~{sets}~~ *set* forth the minimum percentage of the total amount of electricity sold *by an electric utility to its retail customers in this state* during each calendar year that must be derived from renewable energy resources. The portfolio standards must:

(a) ~~{Be}~~ *On January 1, 2001, be* set at two-tenths of ~~{one}~~ *1* percent of the total amount of electricity ~~{annually consumed}~~ *sold by the electric utility to its retail* customers in this state ~~{as of January 1, 2001.}~~

~~—(b) Be increased biannually thereafter~~ during the immediately preceding calendar year.

(b) On January 1 of each successive odd-numbered year, be increased by two-tenths of ~~{one}~~ 1 percent of the total ~~{annual electric consumption}~~ amount of electricity sold by the electric utility to its retail customers in this state during the immediately preceding calendar year until the ~~{standard reaches}~~ portfolio standards reach a total of 1 percent of the total amount of electricity ~~{consumed}~~ sold by the electric utility to its retail customers in this state during the immediately preceding calendar year.

(c) Be derived from not less than 50 percent renewable energy resources.

(d) Be derived from not less than 50 percent solar renewable energy systems.

(e) Be based on renewable energy credits, if applicable.

2. Each ~~{vertically integrated}~~ electric utility ~~{and alternative seller that provides electric service in this state}~~ shall comply with the portfolio ~~{standard}~~ standards established by the commission pursuant to this section. At the end of each calendar year, each ~~{vertically integrated}~~ electric utility ~~{and alternative seller}~~ shall submit a report, in a format approved by the commission, of the quantity of renewable energy and credits, if applicable, that the electric utility ~~{or alternative seller}~~ generated, purchased, sold and traded to meet the portfolio standards. ~~{of the portfolio}~~

3. In establishing the portfolio standards pursuant to this section, the commission may establish a system of credits pursuant to which an electric utility ~~{and alternative seller}~~ may comply with the provisions of this section. A system of credits must provide that:

(a) Credits are issued for renewable energy resources for each kilowatt hour of energy which it produces; and

(b) Holders of credits may trade or sell the credits to other parties.

4. For the purposes of this section, ~~{a vertically integrated electric utility which, if, on January 1, 1997, has}~~ at least 9 percent of ~~{its electricity consumed by}~~ the total amount of electricity sold by an electric utility to its retail customers ~~{served by}~~ in this state during the immediately preceding calendar year was derived from renewable energy resources, the electric utility shall be deemed to be in compliance until January 1, 2005, with the portfolio standards established by the commission pursuant to this section. Between January 1, 2005, and December 31, 2009, such ~~{a vertically integrated} an~~ electric utility ~~{and its affiliated alternative seller, if any, shall reach a total of}~~ shall have one-half of 1 percent of the total amount of electricity ~~{consumed by}~~ sold to its retail customers ~~{in this state, increased}~~ in annual increments of one-tenth of 1 percent ~~{in}~~ during each calendar year of that period, derived from solar energy resources for full compliance with the portfolio ~~{standard}~~ standards established by the commission pursuant to this section.

5. ~~{The}~~ In addition to the report required by subsection 2, each electric utility ~~{and alternative seller}~~ shall submit a report ~~{to}~~, in a format approved by the commission, that provides information relating to the compliance by the ~~{vertically integrated}~~ electric utility ~~{or alternative}~~

~~seller~~ with the requirements of this section. Such reports must be made at least annually, unless the commission by regulation determines that such reports must be made more frequently than annually, and must include clear and concise information that sets forth:

(a) If the ~~{vertically-integrated}~~ electric utility installed a renewable energy system during the period for which the report is being made, the date of installation;

(b) The capacity of renewable energy systems of the ~~{vertically-integrated}~~ electric utility ; ~~{for alternative seller;}~~

(c) The amount of production of energy from the renewable energy systems;

(d) The portion of the production of energy that is directly derived from renewable energy resources;

(e) The quantity of energy from renewable energy systems that is transmitted or distributed, or both, to *retail* customers in this state by the ~~{vertically-integrated}~~ electric utility ; ~~{for alternative seller;}~~ and

(f) Such other information that the commission by regulation may deem relevant.

6. ~~{Nothing in this section applies}~~ *The provisions of this section do not apply* to:

(a) Rural electric cooperatives established pursuant to chapter 81 of NRS;

(b) General improvement districts established pursuant to chapter 318 of NRS; or

(c) Utilities established pursuant to chapter 709 or 710 of NRS.

7. As used in this section:

(a) *“Electric utility” has the meaning ascribed to it in section 19 of this act.*

(b) “Renewable energy resources” means wind, solar, geothermal and biomass energy resources ~~{in this state}~~ that are naturally regenerated.

~~{(b)}~~ (c) “Renewable energy system” means an energy system ~~{in this state}~~ that utilizes renewable energy resources to produce electricity or solar thermal energy systems that reduce the consumption of electricity that was installed and commenced operations after July 1, 1997.

Sec. 29. NRS 228.360 is hereby amended to read as follows:

228.360 The consumer’s advocate ~~{may;}~~ :

1. *Shall intervene in and represent the public interest in all proceedings conducted pursuant to sections 8 to 18, inclusive, of this act.*

2. *May*, with respect to all public utilities except railroads and cooperative utilities, and except as provided in NRS 228.380:

~~{1-}~~ (a) Conduct or contract for studies, surveys, research or expert testimony relating to matters affecting the public interest or the interests of utility customers.

~~{2-}~~ (b) Examine any books, accounts, minutes, records or other papers or property of any public utility subject to the regulatory authority of the public utilities commission of Nevada in the same manner and to the same extent as authorized by law for members of the public utilities commission of Nevada and its staff.

~~{3- Petition}~~

(c) Except as otherwise provided in subsection 1, petition for, request, initiate, appear or intervene in any proceeding concerning rates, charges, tariffs, modifications of service or any related matter before the public utilities commission of Nevada or any court, regulatory body, board, commission or agency having jurisdiction over any matter which the consumer's advocate may bring before or has brought before the public utilities commission of Nevada or in which the public interest or the interests of any particular class of utility customers are involved. The consumer's advocate may represent the public interest or the interests of any particular class of utility customers in any such proceeding, and he is a real party in interest in the proceeding.

Sec. 30. NRS 228.390 is hereby amended to read as follows:

228.390 *Except as otherwise provided in sections 8 to 18, inclusive, of this act:*

1. The consumer's advocate has sole discretion to represent or refrain from representing the public interest and any class of customers in any proceeding.

2. In exercising his discretion, the consumer's advocate shall consider the importance and extent of the public interest or the customers' interests involved and whether those interests would be adequately represented without his participation.

3. If the consumer's advocate determines that there would be a conflict between the public interest and any particular class of customers or any inconsistent interests among the classes of customers involved in a particular matter, he may choose to represent one of the interests, to represent no interest, or to represent one interest through his office and another or others through outside counsel engaged on a case basis.

Sec. 31. NRS 538.181 is hereby amended to read as follows:

538.181 1. The commission shall hold and administer all rights and benefits pertaining to the distribution of the power and water mentioned in NRS 538.041 to 538.251, inclusive, for the State of Nevada ~~H~~ and, except as otherwise provided in NRS 538.186, may enter into contracts relating to that power and water, including the transmission and other distribution services, on such terms as the commission determines.

2. Every applicant, except a federal or state agency or political subdivision, for power or water to be used within the State of Nevada must, before the application is approved, provide an indemnifying bond by a corporation qualified pursuant to the laws of this state, or other collateral, approved by the state board of examiners, payable to the State of Nevada in such sum and in such manner as the commission may require, conditioned for the full and faithful performance of the lease, sublease, contract or other agreement.

3. The power and water must not be sold for less than the actual cost to the State of Nevada.

4. Except as otherwise provided in subsection 5, before any such sale or lease is made, a notice of it must be advertised in two papers of general circulation published in the State of Nevada at least once a week for 2 weeks. The commission shall require any person desiring to make objection thereto to file the objection with the commission within 10 days after the date of the last publication of the notice. If any objection is filed,

the commission shall set a time and place for a hearing of the objection not more than 30 days after the date of the last publication of the notice.

5. The provisions of subsection 4 do not apply to:

(a) Any contract by the commission to sell supplemental power to a holder of a long-term firm contract with the state for power if the supplemental power is procured by the commission from a prearranged source and is secured by the holder for his own use; or

(b) Any agreement by the commission to sell short-term or interruptible power on short notice for immediate acceptance to a holder of a long-term firm contract with the state for power who can take delivery of the short-term or interruptible power when it is available.

6. Except as otherwise provided in subsection 2 of NRS 538.251, any such lease, sublease, contract or sale of the water or power is not binding upon the State of Nevada until ratified and approved by the governor and, where required by federal law, until approved by the United States.

7. The commission shall, upon the expiration of a contract for the sale of power which is in effect on July 1, 1993, offer to the purchaser the right to renew the contract. If the commission is unable to supply the amount of power set forth in the contract because of a shortage of power available for sale, it shall reduce, on a pro rata basis, the amount of power it is required to sell pursuant to the renewed contract.

8. ~~Except as otherwise provided in NRS 704.987, notwithstanding~~ **Notwithstanding** any provision of chapter 704 of NRS, any purchase of:

(a) Power or water for distribution or exchange, and any subsequent distribution or exchange of power or water by the commission; or

(b) Water for distribution or exchange, and any subsequent distribution or exchange of water by any entity to which or with which the commission has contracted the water,

is not subject to regulation by the public utilities commission of Nevada.

Sec. 32. 1. NRS 704.965, 704.966, 704.967, 704.968, 704.969, 704.970, 704.971, 704.972, 704.973, 704.974, 704.975, 704.976, 704.977, 704.978, 704.979, 704.980, 704.981, 704.982, 704.9823, 704.9826, 704.9829, 704.983, 704.984, 704.985, 704.986, 704.9865, 704.987, 704.988 and 704.990 are hereby repealed.

2. Sections 335 and 337 of chapter 482, Statutes of Nevada 1997, at pages 2021 and 2022, respectively, and sections 17, 21, 22, 24 and 26 of chapter 600, Statutes of Nevada 1999, at pages 3269 and 3272, are hereby repealed.

3. Section 127 of Senate Bill No. 29 of this session is hereby repealed.

Sec. 33. The public utilities commission of Nevada shall:

1. Amend, modify, supplement, annul or vacate any order or directive issued by the commission before the effective date of this act that authorizes or requires an electric utility to dispose of any generation asset, if such disposal would violate the provisions of this act;

2. Take all appropriate action to request that the Federal Energy Regulatory Commission and any other officer, agency or department of the Federal Government:

(a) Not issue any order or directive that authorizes or requires an electric utility to dispose of any generation asset, if such an order or

directive could be interpreted as being in conflict with or preempting the provisions of this act; and

(b) Amend, modify, supplement, annul or vacate any order or directive issued before, on or after the effective date of this act that authorizes or requires an electric utility to dispose of any generation asset, if such an order or directive could be interpreted as being in conflict with or preempting the provisions of this act;

3. If any action taken pursuant to subsection 2 is unsuccessful, take all appropriate legal action to challenge any order or directive issued by the Federal Energy Regulatory Commission or any other officer, agency or department of the Federal Government that authorizes or requires an electric utility to dispose of any generation asset, if such an order or directive could be interpreted as being in conflict with or preempting the provisions of this act; and

4. Take any other action or issue any other orders necessary to carry out the provisions of this act.

Sec. 34. As used in this section and sections 35 and 36 of this act, unless the context otherwise requires:

1. “Affiliate” means an entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another entity.

2. “Commission” means the public utilities commission of Nevada.

3. “Comprehensive energy plan” means the application to adopt a comprehensive energy plan, designated in the records of the commission as Docket No. 01-1045, and all amendments and modifications to the application or the plan.

4. “Deferred account” means any account that is used to carry out deferred accounting pursuant to section 19 of this act.

5. “Electric utility” has the meaning ascribed to it in section 19 of this act.

6. “Electric utility holding company” means:

(a) An entity which is incorporated or organized under the laws of this state and which holds a controlling interest in an electric utility; and

(b) A successor in interest to any entity described in paragraph (a).

7. “Electric utility that primarily serves densely populated counties” means an electric utility that, with regard to the provision of electric service, derives more of its annual gross operating revenue in this state from customers located in counties whose population is 400,000 or more than it does from customers located in counties whose population is less than 400,000.

8. “Electric utility that primarily serves less densely populated counties” means an electric utility that, with regard to the provision of electric service, derives more of its annual gross operating revenue in this state from customers located in counties whose population is less than 400,000 than it does from customers located in counties whose population is 400,000 or more.

Sec. 35. Except as otherwise provided in section 36 of this act and notwithstanding the provisions of any other specific statute to the contrary:

1. An electric utility shall not file an application for a fuel and purchased power rider on or after the effective date of this act.

2. Each application for a fuel and purchased power rider filed by an electric utility which is pending with the commission on the effective date of this act and which the electric utility did not place into effect before or on April 1, 2001, is void and unenforceable and is not valid for any purpose after April 1, 2001.

3. If, before March 1, 2001, an electric utility incurred any costs for fuel or purchased power, including, without limitation, any costs for fuel or purchased power recorded or carried on the books and records of the electric utility, and those costs were not recovered or could not be recovered pursuant to a fuel and purchased power rider placed into effect by the electric utility before March 1, 2001, the electric utility is not entitled, on or after March 1, 2001, to recover any of those costs for fuel or purchased power from customers, and the commission shall not allow the electric utility to recover any of those costs for fuel or purchased power from customers.

4. Except as otherwise provided in this section, on and after the effective date of this act:

(a) The commission shall not take any further action on the comprehensive energy plan, and each electric utility that jointly filed the comprehensive energy plan shall be deemed to have withdrawn the comprehensive energy plan;

(b) The rates that each electric utility placed into effect on March 1, 2001, pursuant to the comprehensive energy plan shall be deemed to be a component of the electric utility's rates for fuel and purchased power; and

(c) The revenues collected by each electric utility before April 1, 2001, from the rates that each electric utility placed into effect on March 1, 2001, pursuant to the comprehensive energy plan shall be deemed to be a credit in the electric utility's deferred accounts.

5. On or before October 1, 2001, each electric utility that primarily serves densely populated counties shall file a general rate application pursuant to subsection 3 of NRS 704.110, as amended by this act. On or before December 1, 2001, each electric utility that primarily serves densely populated counties shall file an application to clear its deferred accounts pursuant to subsection 7 of NRS 704.110, as amended by this act. After such an electric utility files the application to clear its deferred accounts, the commission shall investigate and determine whether the rates that the electric utility placed into effect on March 1, 2001, pursuant to the comprehensive energy plan are just and reasonable and reflect prudent business practices. On the date on which the commission issues a final order on the general rate application, the commission shall issue a final order on the electric utility's application to clear its deferred accounts. The total rates to provide electric service that were in effect on April 1, 2001, for the electric utility must remain in effect until the date on which the commission issues a final order on the general rate application. The commission shall not adjust the rates of the electric utility during this period unless such an adjustment is absolutely necessary to avoid rates that are confiscatory under the Constitution of the United States or the constitution of this state. The commission:

(a) May make such an adjustment only to the extent that it is absolutely necessary to avoid an unconstitutional result; and

(b) Shall not, in any proceedings concerning such an adjustment, approve any rate or grant any relief that is not absolutely necessary to avoid an unconstitutional result.

After the electric utility files the general rate application that is required by this subsection, the electric utility shall file general rate applications in accordance with subsection 3 of NRS 704.110, as amended by this act. After the electric utility files the application to clear its deferred accounts that is required by this subsection, the electric utility shall file applications to clear its deferred accounts in accordance with section 19 of this act and subsection 7 of NRS 704.110, as amended by this act.

6. On or before December 1, 2001, each electric utility that primarily serves less densely populated counties shall file a general rate application pursuant to subsection 3 of NRS 704.110, as amended by this act. On or before February 1, 2002, each electric utility that primarily serves less densely populated counties shall file an application to clear its deferred accounts pursuant to subsection 7 of NRS 704.110, as amended by this act. After such an electric utility files the application to clear its deferred accounts, the commission shall investigate and determine whether the rates that the electric utility placed into effect on March 1, 2001, pursuant to the comprehensive energy plan are just and reasonable and reflect prudent business practices. On the date on which the commission issues a final order on the general rate application, the commission shall issue a final order on the electric utility's application to clear its deferred accounts. The total rates to provide electric service that were in effect on April 1, 2001, for the electric utility must remain in effect until the date on which the commission issues a final order on the general rate application. The commission shall not adjust the rates of the electric utility during this period unless such an adjustment is absolutely necessary to avoid rates that are confiscatory under the Constitution of the United States or the constitution of this state. The commission:

(a) May make such an adjustment only to the extent that it is absolutely necessary to avoid an unconstitutional result; and

(b) Shall not, in any proceedings concerning such an adjustment, approve any rate or grant any relief that is not absolutely necessary to avoid an unconstitutional result.

After the electric utility files the general rate application that is required by this subsection, the electric utility shall file general rate applications in accordance with subsection 3 of NRS 704.110, as amended by this act. After the electric utility files the application to clear its deferred accounts that is required by this subsection, the electric utility shall file applications to clear its deferred accounts in accordance with section 19 of this act and subsection 7 of NRS 704.110, as amended by this act.

Sec. 36. Notwithstanding the provisions of any other specific statute to the contrary:

1. If, on or after January 1, 1999, and before the effective date of this act, an electric utility holding company entered into any transaction to acquire a controlling interest in a public utility that provides electric service primarily to customers located outside of this state, the electric utility holding company shall not carry out the transaction unless, on or after the effective date of this act:

(a) The electric utility holding company files with the commission an application for authorization of the transaction; and

(b) The commission issues a written order that authorizes the transaction. The commission shall not authorize the transaction unless the commission finds that the transaction will be in the public interest. The commission may base its authorization of the transaction upon such terms, conditions or modifications as the commission deems appropriate.

2. If the commission authorizes a transaction described in subsection 1 and, before July 1, 2003, the electric utility holding company acquires a controlling interest in such a public utility, or any affiliate thereof, pursuant to the transaction:

(a) Each electric utility in which the electric utility holding company holds a controlling interest shall not use deferred accounting pursuant to section 19 of this act on or after the date on which the electric utility holding company acquires a controlling interest in the public utility, or any affiliate thereof;

(b) Not later than 90 days after that date, each such electric utility shall file one final application to clear the remaining balance in its deferred accounts pursuant to subsection 7 of NRS 704.110, as amended by this act;

(c) For each such electric utility, the commission shall not carry out the provisions of section 35 of this act concerning deferred accounting and deferred accounts; and

(d) The commission shall carry out the remaining provisions of section 35 of this act, including, without limitation, the commission's investigation and determination whether the rates that each electric utility placed into effect on March 1, 2001, pursuant to the comprehensive energy plan are just and reasonable and reflect prudent business practices.

3. Any transaction that violates the provisions of this section is void and unenforceable and is not valid for any purpose.

Sec. 37. Any license issued to an alternative seller pursuant to NRS 704.977 is void on and after the effective date of this act.

Sec. 38. 1. The provisions of this act are hereby declared to be severable.

2. If any provision of this act is held invalid, or if the application of any such provision to any person, thing or circumstance is held invalid, such invalidity does not affect any other provision of this act that can be given effect without the invalid provision or application.

Sec. 39. This act becomes effective upon passage and approval.