

# STATE OF NEW YORK

11120

## IN ASSEMBLY

November 6, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Paulin, Lavine) -- (at request of the Governor) -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to strengthening of utility storm response and compliance; and to create a study of municipal takeover of water supply in northwest Nassau County

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 25 of the public service law, as added by chapter  
2 665 of the laws of 1980, subdivision 2, paragraph (a) of subdivision 3  
3 and paragraph (a) of subdivision 4 as amended by chapter 375 of the laws  
4 of 1986, is amended to read as follows:

5 § 25. Penalties. 1. Every public utility company, corporation or  
6 person and the officers, agents and employees thereof shall obey and  
7 comply with every provision of this chapter and every order or regu-  
8 lation adopted under authority of this chapter so long as the same shall  
9 be in force.

10 2. Any public utility company, corporation or person and the officers,  
11 agents and employees thereof that knowingly fails or neglects to obey or  
12 comply with a provision of this chapter or a regulation or ~~an~~ order  
13 adopted under authority of this chapter so long as the same shall be in  
14 force, shall forfeit to the people of the state of New York a sum not  
15 exceeding one hundred thousand dollars constituting a civil penalty for  
16 each and every offense and, in the case of a continuing violation, each  
17 day shall be deemed a separate and distinct offense.

18 3. Notwithstanding the provisions of subdivision two of this section,  
19 any such public utility company, corporation or person and the officers,  
20 agents and employees thereof that knowingly fails or neglects to obey or  
21 comply with a provision of this chapter, or an order or regulation  
22 adopted under the authority of this chapter, adopted specifically for  
23 the protection of human safety, including but not limited to the commis-  
24 sion's code of gas safety regulations shall, if it is determined by the  
25 commission that such safety violation caused or constituted a contribut-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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ing factor in bringing about a death or personal injury, forfeit to the state of New York a sum [~~not to exceed the greater of:~~

~~(a) two hundred and fifty thousand dollars constituting a civil penalty for each separate and distinct offense, provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(b) the maximum forfeiture determined in accordance with subdivision two of this section.~~

~~4. Notwithstanding the provisions of subdivision one or two of this section, a public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the overall reliability and continuity of electric service, shall forfeit to the state of New York a sum not to exceed the greater of:~~

~~(a) five hundred thousand dollars constituting a civil penalty for each separate and distinct offense, provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(b) the maximum forfeiture determined in accordance with subdivision two of this section.]~~ fixed by the public service commission, after considering the following:

(a) the scope of damages caused by the violation, to consumers, businesses and the state;

(b) each individual act or omission which led to the violation;

(c) whether the violation was willful;

(d) whether the violation was recurring, or had been the subject of a previous finding by the commission;

(e) the economic damage associated with the violation, to ratepayers in the form of future investments that must be made to the infrastructure weakened or damaged in the event, which was in the estimation of the commission preventable; and

(f) whether the violation was caused in whole or in part due to the systematic failure of the entity to maintain or replace obsolete or deteriorated materials or equipment.

4. A public utility company, corporation or person and the officers, agents and employees thereof shall forfeit to the state of New York a sum assessed by the commission for the purposes of providing residential consumer relief related to the loss of personal property, not to exceed five hundred dollars per household, and/or an amount specified by the commission pursuant to an order may be required to set aside for relief for commercial, industrial or governmental customers of the utility which may be available as bill credits for particular cases where there was significant damages, in the event of continued service outages which constitute a violation of such company's, corporation's, or person's emergency response plan submitted pursuant to section sixty-six of this chapter. All moneys recovered pursuant to this subdivision, together with the costs thereof, shall be remitted to, or for the benefit of, the ratepayers in a manner to be determined by the commission.

1 5. Penalties provided for pursuant to this section shall be recovered  
2 in an action as provided in section twenty-four of this article.

3 6. Any payment made by a public utility company, corporation or person  
4 and the officers, agents and employees thereof as a result of an action  
5 as provided in section twenty-four of this article and the cost of liti-  
6 gation and investigation related to any such action shall not be  
7 included by the commission in revenue requirements used to establish  
8 rates and charges.

9 7. In construing and enforcing the provisions of this chapter relating  
10 to forfeitures and penalties, the act of any director, officer, agent or  
11 employee of a public utility company, corporation or person acting with-  
12 in the scope of his or her official duties or employment shall be deemed  
13 to be the act of such public utility company, corporation or person.

14 § 2. Section 25-a of the public service law, as added by section 2 of  
15 part X of chapter 57 of the laws of 2013, is amended to read as follows:

16 § 25-a. Combination gas and electric corporations; administrative  
17 sanctions; recovery of penalties. Notwithstanding sections twenty-four  
18 and twenty-five of this article: 1. Every combination gas and electric  
19 corporation and the officers thereof shall adhere to every provision of  
20 this chapter and every order or regulation adopted under authority of  
21 this chapter so long as the same shall be in force.

22 2. (a) The commission shall have the authority to assess a civil  
23 penalty in an amount as set forth in this section and impose any other  
24 required relief against a combination gas and electric corporation and  
25 the officers thereof subject to the jurisdiction, supervision, or regu-  
26 lation pursuant to this chapter [~~in an amount as set forth in this~~  
27 ~~section~~]. In determining the amount of any penalty to be assessed pursu-  
28 ant to this section, the commission shall consider: [~~(i) the seriousness~~  
29 ~~of the violation for which a penalty is sought, (ii) the nature and~~  
30 ~~extent of any previous violations for which penalties have been assessed~~  
31 ~~against the corporation or officer, (iii) whether there was knowledge of~~  
32 ~~the violation, (iv) the gross revenues and financial status of the~~  
33 ~~corporation, and (v) such other factors as the commission may deem~~  
34 ~~appropriate and relevant.~~]

35 (i) the scope of damages caused by the violation, to consumers, busi-  
36 nesses and the state;

37 (ii) each individual act or omission which led to the violation;

38 (iii) whether the violation was willful;

39 (iv) whether the violation was recurring, or had been the subject of a  
40 previous finding by the commission;

41 (v) the economic damage associated with the violation, to ratepayers  
42 in the form of future investments that must be made to the infrastruc-  
43 ture weakened or damaged in the event, which was in the estimation of  
44 the commission preventable; and

45 (vi) whether the violation was caused in whole or in part due to the  
46 systematic failure of the entity to maintain or replace obsolete or  
47 deteriorated materials or equipment.

48 The remedies provided by this subdivision are in addition to any other  
49 remedies provided in law.

50 (b) [~~Whenever the commission has reason to believe that a combination~~  
51 ~~gas and electric corporation or such officers thereof should be subject~~  
52 ~~to imposition of a civil penalty as set forth in this subdivision, it~~  
53 ~~shall notify such corporation or officer.~~] The department is authorized,  
54 pursuant to a referral made by the chief executive officer of the  
55 department, to commence a proceeding pursuant to this section upon issua-  
56 ance of a notice of violation if it believes that a combination gas and

electric corporation, or such officers thereof, may be subject to imposition of a civil penalty as set forth in this subdivision and/or such other relief as may be required to address such alleged violation. Such notice shall include, but shall not be limited to: (i) the date and a brief description of the facts and nature of each act or failure to act for which such penalty is proposed; (ii) a list of each statute, regulation or order that the ~~commission~~ department alleges has been violated; and (iii) the amount of each penalty that the ~~commission~~ department proposes to ~~assess~~ be assessed; and (iv) any proposed actions that the department deems necessary to address such alleged violation or violations. The department is authorized to undertake any additional administrative or investigatory actions related to such violation or violations, including but not limited to, service of an administrative complaint, implementation of discovery, interviews, depositions, entering into a settlement agreement or other stipulation, and the holding of evidentiary hearings, as provided in this chapter.

(c) ~~Whenever the commission has reason to believe that a combination gas and electric corporation or such officers thereof should be subject to imposition of a civil penalty or penalties as set forth in this subdivision, the commission shall hold a hearing to demonstrate why the proposed penalty or penalties should be assessed against such combination gas and electric corporation or such officers.] Any assessment of penalties, resolution of claims or imposition of other relief levied by the department pursuant to an investigation or complaint proceeding commenced pursuant to paragraph (b) of this subdivision shall be required to be established after holding of an evidentiary hearing, and such finding is required to be approved by the commission but may be settled by agreement between the parties at any time prior to such hearing, or after such hearing, as mutually agreed upon by the parties.~~

3. Any combination gas and electric corporation or such officers thereof, determined by the commission to have failed to ~~reasonably~~ comply as shown by a preponderance of the evidence, at an evidentiary hearing, with a provision of this chapter, regulation or an order adopted under authority of this chapter so long as the same shall be in force shall forfeit a sum ~~[not exceeding the greater of one hundred thousand dollars or two one hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense]~~ fixed by the public service commission, after considering the following:

(a) the scope of damages caused by the violation, to consumers, businesses and the state;

(b) each individual act or omission which led to the violation;

(c) whether the violation was willful;

(d) whether the violation was recurring, or had been the subject of a previous finding by the commission;

(e) the economic damage associated with the violation, to ratepayers in the form of future investments that must be made to the infrastructure weakened or damaged in the event, which was in the estimation of the commission preventable; and

(f) whether the violation was caused in whole or in part due to the systematic failure of the entity to maintain or replace obsolete or deteriorated materials or equipment.

4. ~~[Notwithstanding the provisions of subdivision three of this section, any such combination gas and electric corporation determined by~~

~~the commission to have failed to reasonably comply with a provision of this chapter, or an order or regulation adopted under the authority of this chapter specifically for the protection of human safety or prevention of significant damage to real property, including, but not limited to, the commission's code of gas safety regulations shall, if it is determined by the commission by a preponderance of the evidence that such safety violation caused or constituted a contributing factor in bringing about: (a) a death or personal injury; or (b) damage to real property in excess of fifty thousand dollars, forfeit a sum not to exceed the greater of:~~

~~(i) two hundred fifty thousand dollars or three one hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, constituting a civil penalty for each separate and distinct offense, provided, however, that for purposes of this paragraph, each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(ii) the maximum forfeiture determined in accordance with subdivision three of this section.~~

~~5. Notwithstanding the provisions of subdivision three or four of this section, a combination gas and electric corporation determined by the commission to have failed to reasonably comply by a preponderance of the evidence with a provision of this chapter, or an order or regulation adopted under authority of this chapter, designed to protect the overall reliability and continuity of electric service, including but not limited to the restoration of electric service following a major outage event or emergency, shall forfeit a sum not to exceed the greater of:~~

~~(a) five hundred thousand dollars or four one hundredths of one percent of the annual intrastate gross operating revenue of the corporation, not including taxes paid to and revenues collected on behalf of government entities, whichever is greater, constituting a civil penalty for each separate and distinct offense, provided, however, that for purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or~~

~~(b) the maximum forfeiture determined in accordance with subdivision three of this section.~~

~~6. Any officer of any combination gas and electric corporation determined by the commission to have violated the provisions of subdivision three, four, or five of this section, and who knowingly violates a provision of this chapter, regulation or an order adopted under authority of this chapter so long as the same shall be in force shall forfeit a sum not to exceed one hundred thousand dollars constituting a civil penalty for each and every offense and, in the case of a continuing violation, each day shall be deemed a separate and distinct offense.~~

~~7. Any such assessment may be compromised or discontinued by the commission.] All moneys recovered pursuant to this section, together with the costs thereof, shall be remitted to, or for the benefit of, the ratepayers in a manner to be determined by the commission.~~

~~[8.]~~ 5. Upon a failure by a combination gas and electric corporation or officer to remit any penalty assessed by the commission pursuant to

1 this section, the commission, through its counsel, may institute an  
2 action or special proceeding to collect the penalty in a court of compe-  
3 tent jurisdiction.

4 ~~[9-]~~ 6. Any payment made by a combination gas and electric corporation  
5 or the officers thereof as a result of an assessment or penalty as  
6 provided in this section, and the cost of litigation and investigation  
7 related to any such assessment, shall not be recoverable from ratepay-  
8 ers.

9 ~~[10-]~~ 7. In construing and enforcing the provisions of this chapter  
10 relating to penalties, the act of any director, officer, agent or  
11 employee of a combined gas and electric corporation acting within the  
12 scope of his or her official duties or employment shall be deemed to be  
13 the act of such corporation.

14 ~~[11-]~~ 8. It shall be a violation of this chapter should a director,  
15 officer or employee of a public utility company, corporation, person  
16 acting in his or her official duties or employment, or an agent acting  
17 on behalf of an employer take retaliatory personnel action such as  
18 discharge, suspension, demotion, penalization or discrimination against  
19 an employee for reporting a violation of a provision of this chapter  
20 ~~[of]~~ an order or regulation adopted under the authority of this chapter,  
21 including, but not limited to, those governing safe and adequate  
22 service, protection of human safety or prevention of significant damage  
23 to real property, including, but not limited to, the commission's code  
24 of gas safety. Nothing in this subdivision shall be deemed to diminish  
25 the rights, privileges or remedies of any employee under any other law  
26 or regulation, including but not limited to article twenty-C of the  
27 labor law and section seventy-five-b of the civil service law, or under  
28 any collective bargaining agreement or employment contract.

29 § 3. The public service law is amended by adding a new section 25-b to  
30 read as follows:

31 § 25-b. Administrative actions against other regulated entities.  
32 Notwithstanding any other provision of this chapter, section twenty-  
33 five-a of this article shall apply in equal force to: 1. an electric  
34 corporation as defined in subdivision thirteen of section two of this  
35 article; 2. a gas corporation as defined in subdivision eleven of  
36 section two of this article; 3. a cable television company or cable  
37 television system as defined in subdivisions one and two of section two  
38 hundred twelve of this article; 4. a telephone corporation as defined in  
39 subdivision seventeen of section two of this article; 5. a steam corpo-  
40 ration as defined in subdivision twenty-two of section two of this arti-  
41 cle; and 6. a water-works corporation as defined in subdivision twenty-  
42 seven of section two of this article; as well as the officers or  
43 employees of any such corporate entities described above.

44 § 4. Subdivision 2 of section 68 of the public service law, as added  
45 by section 5 of part X of chapter 57 of the laws of 2013, is amended and  
46 a new subdivision 3 is added to read as follows:

47 2. Revocation or modification of certificate. The commission may  
48 commence a proceeding, conducted in accordance with the commission's  
49 rules and regulations, to revoke or modify a combined electric and gas  
50 corporation's certificate as it relates to such corporation's service  
51 territory or any portion thereof based on findings of repeated (two or  
52 more) violations of this chapter or rules or regulations or orders  
53 adopted thereto [that demonstrate a failure of], or violations of this  
54 chapter or rules, regulations, or orders thereto demonstrating a failure  
55 of such corporation to continue to provide safe and adequate service.  
56 Whenever the commission has reason to believe that such corporation's



1 certificate may be subject to revocation or modification, it shall noti-  
2 fy such corporation of the facts and nature of each act or failure to  
3 act allegedly warranting such revocation or modification, and the stat-  
4 ute, regulation or order allegedly violated, and otherwise consider the  
5 following factors:

6 (a) the factors identified in subdivision one of this section for  
7 issuance of a certificate of public convenience and necessity; and

8 (b) whether [~~another person, firm or corporation is qualified, avail-  
9 able, and prepared to provide alternative service that is adequate to  
10 serve the public convenience and necessity, and that the~~] transition to  
11 [~~such~~] an alternative person, firm or corporation is in the public  
12 interest; and

13 (c) upon any other standards and procedures deemed necessary by the  
14 commission to ensure continuity of safe and adequate service, and due  
15 process.

16 3. (a) In the event the commission makes the required findings pursu-  
17 ant to subdivision two of this section warranting the revocation of the  
18 certificate of a combined electric and gas corporation's certificate, it  
19 may further determine as part of such proceeding that an emergency  
20 exists with respect to the corporations' ability to provide continuous  
21 service. If such determination is made, then the commission may appoint  
22 one or more persons to be receivers of and for such corporation. The  
23 commission may grant such receiver or receivers with authority to take  
24 charge of such corporation's assets, estate, effects, business and  
25 affairs, and to collect the outstanding debts, claims, and property due  
26 and belonging to the corporation, with power to prosecute and defend, in  
27 the name of the corporation or otherwise, all claims or suits, to  
28 appoint an agent or agents under them, and to do all other acts which  
29 might be done by the corporation and which may be necessary or proper.

30 (b) Such proceeding shall be heard in no less than thirty days from  
31 service of the statement of violations to the public utility. The  
32 commission, if it determines that revocation is warranted shall forth-  
33 with determine the penalty associated therewith. The penalty shall,  
34 notwithstanding sections twenty-four and twenty-five of this chapter,  
35 not exceed the value of the real property and fixtures thereto utilized  
36 in utility delivery by such person, firm or corporation, which shall be  
37 paid in-kind by such person, firm or corporation, and shall, however, be  
38 paid a monetary amount fixed by the commission which shall reflect  
39 payment for the shareholder equity contribution, or any bonds which  
40 shall be either assumed by the state or a new entity, unless further  
41 reduced by depreciation. Calculation of such penalty shall be in addi-  
42 tion to any penalties assessed pursuant to sections twenty-four and  
43 twenty-five of this chapter for any given violation or outage.

44 (c) The powers of the receivers shall continue for thirty days, which  
45 may be continued for additional periods of thirty days, so long as the  
46 commission confirms such determination continues to be necessary in  
47 order to assure continuous service.

48 § 5. Subdivision 21 of section 66 of the public service law, as  
49 amended by section 4 of part X of chapter 57 of the laws of 2013, is  
50 amended to read as follows:

51 21. (a) Each electric corporation subject to section twenty-five-a of  
52 this chapter shall annually, on or before December fifteenth, submit to  
53 the commission an emergency response plan for review and approval. The  
54 emergency response plan shall be designed for the reasonably prompt  
55 restoration of service in the case of an emergency event, defined for  
56 purposes of this subdivision as an event where widespread outages have

1 occurred in the service territory of the company due to storms or other  
2 causes beyond the control of the company. The emergency response plan  
3 shall include, but need not be limited to, the following: (i) the iden-  
4 tification of management staff responsible for company operations during  
5 an emergency; (ii) a communications plan that includes: (A) a system  
6 that relays service information with customers during an emergency that  
7 extends beyond normal business hours and business conditions; [~~(iii)~~]  
8 (B) identification of and outreach plans to customers who had documented  
9 their need for essential electricity for medical needs; [~~(iv)~~] (C) iden-  
10 tification of and outreach plans to customers who had documented their  
11 need for essential electricity to provide critical telecommunications,  
12 critical transportation, critical fuel distribution services or other  
13 large-load customers identified by the commission; [~~(v)~~] (D) designation  
14 of company staff to communicate with local officials and appropriate  
15 regulatory agencies; [~~(vi)~~] and (E) identifies, tests and verifies  
16 redundancies in communications systems; (iii) provisions regarding how  
17 the company will assure the safety of its employees and contractors;  
18 [~~(vii)~~] (iv) procedures for deploying company and mutual aid crews to  
19 work assignment areas; [~~(viii)~~] (v) identification of additional  
20 supplies and equipment needed during an emergency; [~~(ix)~~] (vi) the means  
21 of obtaining additional supplies and equipment; [~~(x)~~] (vii) procedures  
22 to practice the emergency response plan; [~~(xi)~~] (viii) appropriate safe-  
23 ty precautions regarding electrical hazards, including plans to promptly  
24 secure downed wires within thirty-six hours of notification of the  
25 location of such downed wires from a municipal emergency official; and  
26 [~~(xii)~~] (ix) such other additional information as the commission may  
27 require. Each such corporation shall, on an annual basis, undertake  
28 drills implementing procedures to practice its emergency management  
29 plan. The commission may adopt additional requirements consistent with  
30 ensuring the reasonably prompt restoration of service in the case of an  
31 emergency event.

32 (b) After review of a corporation's emergency response plan, the  
33 commission may require such corporation to amend the plan. The commis-  
34 sion may also open an investigation of the corporation's plan to deter-  
35 mine its sufficiency to respond adequately to an emergency event. If,  
36 after hearings, the commission finds a material deficiency in the plan,  
37 it may order the company to make such modifications that it deems  
38 reasonably necessary to remedy the deficiency.

39 (c) The commission is authorized to open an investigation to review  
40 the performance of any corporation in restoring service, implementing  
41 communications plans or otherwise meeting the requirements of the emer-  
42 gency response plan during an emergency event. If, after evidentiary  
43 hearings or other investigatory proceedings, the commission finds that  
44 the corporation failed to [~~reasonably~~] implement its emergency response  
45 plan or the length of such corporation's outages were materially longer  
46 than they would have been, because of such corporation's failure to  
47 [~~reasonably~~] implement its emergency response plan, the commission may  
48 deny the recovery of any part of the service restoration costs caused by  
49 such failure, commensurate with the degree and impact of the service  
50 outage; provided, however, that nothing herein limits the commission's  
51 authority to otherwise commence a proceeding pursuant to sections twen-  
52 ty-four, twenty-five and twenty-five-a of this chapter.

53 (d) The commission shall certify to the department of homeland securi-  
54 ty and emergency services that each such corporation's emergency  
55 response plan is sufficient to ensure to the greatest extent feasible



1 the timely and safe restoration of energy services after an emergency in  
2 compliance with the requirements of this chapter.

3 (e) The filing of each emergency response plan required under para-  
4 graph (a) of this subdivision shall also include a copy of all written  
5 mutual assistance agreements among utilities.

6 (f) Each electric corporation shall file with the county executive or  
7 the chief elected official of a county for each county within its  
8 service territory the most recent approved copy of the emergency  
9 response plan required pursuant to this section. For the purposes of an  
10 electric corporation operating within the city of New York, such corpo-  
11 ration shall file the most recent approved emergency response plan with  
12 the emergency management office of the city of New York.

13 (g) The commission shall provide access to such emergency response  
14 plan pursuant to article six of the public officers law.

15 § 6. The public service law is amended by adding a new section 5-a to  
16 read as follows:

17 § 5-a. Revocation or modification of authorization to do business in  
18 the state. 1. For purposes of this section, the term "utility provider"  
19 shall mean any or all of the following: (a) an "electric corporation" as  
20 defined in subdivision thirteen of section two of this article, (b) a  
21 "gas corporation" as defined in subdivision eleven of section two of  
22 this article, (c) a "cable television company" or "cable television  
23 system" as defined in subdivisions one and two of section two hundred  
24 twelve of this chapter, (d) a "telephone corporation" as defined in  
25 subdivision seventeen of section two of this article, (e) a "steam  
26 corporation" as defined in subdivision twenty-two of section two of this  
27 article, and (f) a "waterworks corporation" as defined in subdivision  
28 twenty-seven of section two of this article.

29 2. The commission may commence a proceeding, conducted in accordance  
30 with the commission's rules and regulations, to prohibit any utility  
31 provider from operating in the state of New York as it relates to such  
32 provider's service territory or any portion thereof based on findings of  
33 repeated (two or more) violations of this chapter, orders, rules or  
34 regulations adopted thereto that demonstrate a failure of such provider  
35 to continue to provide adequate service. Whenever the commission has  
36 reason to believe that such utility provider may no longer be suitable  
37 to do business in the state, whether or not a certificate of public  
38 convenience and necessity shall have been required prior to its  
39 commencement of operation, then the public service commission shall  
40 issue an order to show cause upon such utility provider, specifying the  
41 reasons why it should not be prohibited from providing utility services  
42 which are subject to the jurisdiction in whole or in part of the commis-  
43 sion. The order to show cause shall further include the facts and nature  
44 of each act or failure to act allegedly warranting such finding, and the  
45 statute, regulation or order allegedly violated, and otherwise consider-  
46 ing the following factors:

47 (a) the factors for issuance of a certificate of public convenience  
48 and necessity;

49 (b) whether the transition to an alternative utility provider is in  
50 the public interest; and

51 (c) upon any other standards and procedures deemed necessary by the  
52 commission to ensure continuity of safe and adequate service, and due  
53 process.

54 3. The order to show cause shall be heard in no less than thirty days  
55 from service of the statement of violations to the public utility. The  
56 commission, if it determines that such order should be granted shall

1 immediately prohibit such utility provider from doing business in the  
2 state of New York. The commission may also seek a civil penalty in addi-  
3 tion to such revocation or modification. The civil penalty shall be,  
4 notwithstanding any other section of this chapter to the contrary, based  
5 upon the value of the real property and fixtures thereto utilized in  
6 utility delivery by such utility provider, which shall be paid in-kind  
7 by such provider, but provided further that the utility provider shall  
8 be additionally paid by the commission a monetary amount fixed by the  
9 commission which shall reflect payment for the shareholder equity  
10 contribution, unless further reduced by depreciation, or any bonds which  
11 must be either defeased, or acquired by a successor entity. Calculation  
12 of such civil penalty shall be in addition to any penalties assessed  
13 pursuant to section twenty-four, twenty-five or twenty-five-b of this  
14 article for any given violation or outage.

15 4. A utility provider subject to a proceeding initiated pursuant to  
16 this section shall be provided with a right to an evidentiary hearing  
17 held in accordance with the commission's procedural regulations, prior  
18 to any final order of the commission.

19 5. A service provider contracted by a public authority may likewise be  
20 prevented from operating in a service territory by action of the public  
21 authority if the department of public service, as part of an investi-  
22 gation of an emergency event, identifies two or more repeated failures  
23 of the service provider to meet its obligations and makes a recommenda-  
24 tion to the board for the public authority to exercise its termination  
25 rights.

26 § 7. Study of municipal takeover of private water utility in Nassau  
27 County. a. Legislative findings. The legislature hereby finds that the  
28 groundwater supply system presently operated by a private utility in  
29 Nassau County servicing the residents of the villages of Atlantic  
30 Beach, Cedarhurst, East Rockaway, Hewlett Bay Park, Hewlett Harbor,  
31 Hewlett Neck, Island Park, Lawrence, Lynbrook, Malverne, Valley Stream,  
32 and Woodsburgh, and a portion of the village of Mill Neck, and the unin-  
33 corporated areas of Baldwin, Hewlett, Oceanside, Roosevelt, Merrick,  
34 North Merrick, Bellmore, North Bellmore, Wantagh, North Wantagh, Seaford  
35 and a portion of the area known as Massapequa and their environs, and a  
36 portion of Massapequa Park and a portion of Levittown, and Sea Cliff,  
37 Glen Head, and Glen Wood landing, is fragile and subject to episodic  
38 deficiencies of varying magnitude including service disruptions and  
39 drastic price variations to residents serviced by the existing  
40 private water company. The groundwater supply requires better manage-  
41 ment of its entire reserve both within and outside the water utility  
42 supply area as well as long range planning to provide protection of  
43 important watershed areas, water conservation, and prevention from  
44 contamination and salt water intrusion. Since the potable water for this  
45 utility area is derived from an aquifer which is the sole source of  
46 water for all of Long Island, the issues of contamination and conserva-  
47 tion are of statewide concern. It is necessary and desirable that the  
48 study required by this section will not only protect, preserve and  
49 enhance the quality and quantity of the water within its supply  
50 area, but that it will also serve as a model and as a leader in foster-  
51 ing cooperation with other water suppliers to better manage, conserve  
52 and protect the groundwater within and outside its supply area.

53 b. Study. The public service commission shall immediately upon the  
54 effectiveness of this act, undertake a study to examine whether a munic-  
55 ipal takeover of the private utility provided water service will better  
56 protect the aquifer and provide better and safer service to the resi-

dents of Nassau County. The public service commission shall consider in such study: the ability of the municipal governments to safely provide service alone or in coordination with any other entity currently providing service, or identifying new providers who can safely provide service; the ability to protect the aquifer long term; the ability of the municipal governments to provide water service at lower cost to customers due to their tax-exempt and not-for-profit status, and the impact on municipal tax revenues.

c. Public forums. The public service commission shall, in coordination with such study, hold three public forums in impacted areas, which may be held virtually, and shall be open for public comments from stakeholders. In addition, the commission must solicit written testimony from elected officials, and superintendents of school districts in impacted areas.

d. Report. The public service commission shall report such findings no later than April 1, 2021 to the governor, the county executive, the temporary president of the senate, and the speaker of the assembly, and post such final report on its website.

§ 8. Section 5 of the public service law is amended by adding a new subdivision 7 to read as follows:

7. The commission shall ensure that customers of an electric corporation, gas corporation, steam corporation or water works corporation do not contribute to excessive executive compensation of such corporation by setting a threshold above which ratepayer funds may not be utilized.

§ 9. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the department of public service or the public service commission is authorized to promulgate any regulations or orders necessary to implement this act.