

File No. 080648

Committee Item No. 4
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Date 7-14-08

Board of Supervisors Meeting

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☒ Charter Amendment 4th Draft

Completed by: McRed
Completed by: _____

Date 7-11-08
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An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

[San Francisco Clean Energy Act]

CHARTER AMENDMENT

PROPOSITION ____

Describing and setting forth a proposal to the qualified voters of the City and County of San Francisco to amend the Charter of the City and County by amending Sections 8B.120, 8B.123, and 9.107, and adding Sections 8B.128 through 8B.131, to: (i) address the crisis of global climate change by moving San Francisco from fossil fuels to clean, sustainable energy production, (ii) ensure environmentally sustainable and affordable electric supplies for residents, businesses, and City departments, (iii) require the Public Utilities Commission to determine the most effective means of providing clean, sustainable, reliable and reasonably-priced electric service to San Francisco residents, businesses and City departments, and (iv) establish an Independent Ratepayer Advocate to represent the interests of San Franciscans that purchase utility services from the City by evaluating and making recommendations on utility rate proposals prepared by the San Francisco Public Utilities Commission under Charter section 8B.125.

The Board of Supervisors hereby submits to the qualified voters of the City at an election to be held on November 4, 2008, a proposal to amend the Charter of the City by amending Sections 8B.120, 8B.123, and 9.107, and adding Sections 8B.128 through 8B.131, to read as follows:

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Deletions are ~~strikethrough italics Times New Roman~~.

SEC. 8B.120. PREAMBLE.

(a) The Public Utilities Commission operates the Water, Clean Water and Power Utilities of the City and County of San Francisco. Hetch Hetchy Water and Power System is an

irreplaceable asset of the people of the City and County of San Francisco. The system is fundamental to the economic vitality of San Francisco and the Bay Area. The voters of the City and County of San Francisco are committed to preserving and protecting the system as well as safeguarding the extraordinary quality of the water from Yosemite and local watersheds. The voters find that the protection, maintenance and repair of the system are among their highest priorities.

San Francisco faces an unprecedented challenge: to restore its aging water system to ensure a reliable Bay Area water supply through the next century. Repairs must be accomplished as quickly as possible to avoid system outages, which could be caused by natural disasters such as earthquake. In planning for its future needs and those of its wholesale customers, the City must promote water conservation and responsible stewardship of its natural resources. The effectiveness of the City's Public Utilities Commission, which has jurisdiction over the system, is essential to achieving these goals.

In addition, San Francisco must upgrade and repair its clean water system to meet changes in state and federal water quality requirements, and to ensure reliability of the system, parts of which are outdated, aged or seismically vulnerable. The voters find that the operation of the clean water system should not unnecessarily place a disproportionate environmental burden on any community.

This measure is intended to enhance public confidence in the City's stewardship of public utilities by:

1. Clarifying that the Public Utilities Commission has exclusive control of water, clean water and power assets owned or maintained by the City and County of San Francisco;
2. Establishing rates sufficient to meet operation, maintenance and financial needs of the system based on costs and sound budgeting and auditing procedures to protect retail ratepayers and reduce interest paid on bonds and other indebtedness while ensuring public review;

3. Establishing the Public Utilities Commission as an independent revenue department not subject to undue financial pressures to contribute to the City's general fund;

4. Requiring the development of long term Capital, Financial and Strategic Plans to ensure that the utilities are operated efficiently in accordance with best public utility practice;

5. Authorizing the Public Utilities Commission to independently enter into certain contracts;

6. Giving the Public Utilities Commission the ability to finance needed capital improvements through revenue bonds or other financing methods consistent with the powers of other major public utilities in California; and

7. Promoting labor stability to ensure that the Capital Improvement Plan is completed expeditiously and efficiently.

8. Evaluating the benefits of local control over electric service, including cost savings and control over development of clean energy and energy efficiency.

9. Evaluating the benefits of a full-service 100% clean public power system in the City to sell power directly to consumers consistent with the U.S. Supreme Court's 1940 interpretation of the Raker Act.

(b) The City has recognized the imperative to change electricity use and production to ensure environmentally sustainable and affordable electric supplies for residents, businesses, and City departments. The voters find that it is a priority to reduce greenhouse gas emissions and invest in clean energy infrastructure and further find that a publicly-owned electric utility may be best suited to carry out that mandate. The Mayor, Board of Supervisors, Public Utilities Commission, and Department of the Environment have adopted various initiatives to promote energy conservation measures, greenhouse gas reduction, renewable energy and environmental justice. The City spends millions of dollars each year on these initiatives. These measures and programs would be more effective as part of a long-term integrated resource plan that sets forth

in one document the City's requirements for transmission, distribution and electricity resources over the next ten years, and the most effective and economic plan to meet those requirements.

The electricity generated by the City's Hetch Hetchy project for City facilities pursuant to the Raker Act is clean and reasonably priced. The City pays millions of dollars each year to ensure delivery of this electricity to City facilities. The City faces substantial cost increases for delivery of Hetch Hetchy electricity in 2015 when the current transmission contract expires. It is imperative that the City commence now to explore alternatives to deliver the Hetch Hetchy electricity to the City after the contract expires.

Residents and businesses in San Francisco pay hundreds of millions of dollars in electricity costs each year. The rates for such customers are established by the state of California, and include costs related to energy efficiency, renewable energy, and greenhouse gas emission reduction. The City continues to investigate ways to improve electric service and reduce costs to these customers, including through measures such as Community Choice Aggregation.

The City has an aggressive goal to reduce its greenhouse gas emissions by 20% below 1990 levels by 2012 and to procure 51% of the City's energy needs through renewable energy and conservation by 2017. The City shall analyze, identify and pursue strategies that maximize greenhouse gas reductions from the electricity sector at the minimum cost.

SEC. 8B.123. PLANNING AND REPORTING.

(A) Planning and Reporting

The Public Utilities Commission shall annually hold public hearings to review, update and adopt:

(1) A Long-Term Capital Improvement Program, covering projects during the next 10-year period; including cost estimates and schedules.

(2) A Long-Range Financial Plan, for a 10-year period, including estimates of operation and maintenance expenses, repair and replacement costs, debt costs and rate increase requirements.

(3) A Long-Term Strategic Plan, setting forth strategic goals and objectives and establishing performance standards as appropriate.

The Capital Improvement Program and Long-Range Financial Plan shall serve as a basis and supporting documentation for the Commission's capital budget, the issuance of revenue bonds, other forms of indebtedness and execution of governmental loans under this Charter.

(B) Citizens' Advisory Committee

The Board of Supervisors, in consultation with the General Manager of the Public Utilities Commission, shall establish by ordinance a Citizens' Advisory Committee to provide recommendations to the General Manager of the Public Utilities Commission, the Public Utilities Commission and the Board of Supervisors.

(C) Clean and Renewable Energy Resource Planning and Implementation.

(1) Within 180 days after the effective date of this measure, the Public Utilities Commission shall produce a draft comprehensive study of the options for providing clean, secure, cost effective electricity for City departments and residents and businesses of San Francisco. The study shall identify the most effective and economic means of implementing the goals of this measure over the short and long term. The study shall consider, without limitation, the following:

(a) Transmission needs to transport Hetch Hetchy generation and cost-effective clean resources into the City. Alternatives evaluated will include at a minimum, construction of City owned transmission lines, contracts or joint transmission projects with other

municipalities and participation in the California Independent System Operator transmission markets.

(b) Transmission and distribution needs within the City to support reliability and facilitate distributed generation and renewables, including without limitation connections between substations and the 115 and 230 kV transmission systems within the City, and transmission and distribution needs to meet new City developments.

(c) Resources needed to meet municipal electric loads, Community Choice Aggregation loads, and other potential City loads, including options to maximize cost-effective energy efficiency and demand-reduction and local and remote renewable and clean resources. The analysis shall include without limitation alternatives for use of renewable fuels, clean and flexible resources, and storage alternatives as needed to meet the requirements of Section 8B.129 and meet the City's resource adequacy capacity obligations. The draft study shall include specific projections of electric demand, energy efficiency achievements, and clean and renewable resource development.

(d) Cost-effective options to reduce greenhouse gas emissions from the electricity sector and to offset greenhouse gas emissions from other sectors.

(e) Costs and benefits of municipalization of the electric system in San Francisco, including the acquisition, construction, or completion of any public utility pursuant to Charter Section 16.101.

(f) Options for integration of long-term measures such as municipalization, with shorter-term measures such as Community Choice Aggregation.

(2) The study shall include a workforce development component to train and place individuals in jobs related to the operation, acquisition, reconstruction, replacement, expansion, repair, or improvement of energy facilities under the jurisdiction of the Public Utilities Commission.

(3) After publication of the draft study, the Commission shall do the following:

(a) Hold at least one public hearing on the draft study not sooner than 30 days or longer than 60 days after issuing it.

(b) Provide for peer review of the study by at least three independent experts and publish the expert reviews within 60 days after issuing the draft report. The independent experts shall have significant expertise in one or more of the following areas, and the Commission shall ensure that each of the following areas is represented by one or more of the experts: consumer advocacy, utility operations, environmental justice, renewable energy, public sector finance.

(c) Within 120 days after issuing the draft study, issue a revised version of the study, which shall document and consider the public review and the expert reviews of the draft study. With this revised study, the Commission shall set forth recommendations with respect to the options considered in the study and a schedule for the expeditious implementation of the selected options. The Commission shall identify those actions that it has taken or plans to take to implement its recommendations, and those measures that require action by the Board of Supervisors or other agencies or officials.

(d) Within 30 days after issuing the revised study with recommendations, conduct a hearing on the revised study and recommendations and then promptly transmit a final study and recommendations to the Board of Supervisors, which shall conduct a hearing on the matter within 30 days of receipt.

(4) Consistent with the language and intent of this measure and Charter Section 16.101, if the Board of Supervisors finds, after reviewing the Commission's report and recommendations of the independent experts, that the public interest or necessity demands, the Board of Supervisors shall direct the Commission to immediately prepare a plan to acquire, construct, or complete the electric facilities serving the City.

(5) Nothing in this measure shall alter the existing authority of the Board of Supervisors over decisions regarding Community Choice Aggregation.

SEC. 8B.128. EMPLOYEES OF INCUMBENT UTILITY.

(a) Employees of the incumbent utility who become City employees as a result of this measure shall not suffer any loss or reduction of compensation or seniority to which they were entitled as of the effective date of this measure.

(b) Employees of the incumbent utility who become City employees as a result of this measure shall be granted by the City the date of hire seniority they possessed with the incumbent utility on the date of the City's acquisition for purposes of calculating vacation and sick leave.

(c) Employees of the incumbent utility who become City employees as a result of this measure shall not involuntarily forfeit any rights or benefits under incumbent utility's defined benefit plan to which they are entitled on the date of the City's acquisition of incumbent utility facilities or commencement of service previously provided by incumbent utility.

SEC. 8B.129. CLEAN AND RENEWABLE ENERGY MANDATES.

(a) The Commission shall rely on energy efficiency, clean, and renewable energy resources to meet the City's electric needs. For purposes of this measure, (i) renewable and/or clean resources shall exclude nuclear power, and (ii) the "City's electric needs" shall mean the electricity demand of customers served electricity by the City.

(b) The Commission shall develop and implement aggressive energy efficiency measures to reduce the City's electric needs.

(c) The City hereby establishes the following requirements for reliance on energy efficiency, clean, and renewable energy resources to produce electricity:

(1) By the year 2012, the Commission shall ensure that at least 107 megawatts of the City's electricity needs are met through the use of clean resources;

(2) By the year 2017, the Commission shall ensure that at least 51% of the City's electricity needs are met through the use of clean resources;

(3) By the year 2030, the Commission shall ensure that at least 75% of the City's electricity needs are met through the use of clean energy resources; and

(4) By the year 2040, the Commission shall ensure that 100% or the greatest amount technologically feasible or practicable of the City's electricity needs are met through the use of clean energy resources.

(d) Every two years beginning in the year 2010, the Commission shall file a report with the Board of Supervisors setting forth all of its efforts to meet the requirements for using clean energy resources set forth in this Section. The report shall include projections of electricity demand, energy efficiency achievements, and renewable resource development.

(e) The Board of Supervisors by a two-thirds vote may modify the mandates established by this section of the Board finds that such modification is in the public interest.

SEC. 8B.130. INDEPENDENT RATEPAYER ADVOCATE.

(a) The Office of the Independent Ratepayer Advocate shall evaluate, analyze, provide comments and make recommendations on the efficiency, equity, and fiscal feasibility of utility rate proposals prepared by the San Francisco Public Utilities Commission under Charter section 8B.125, independent of the San Francisco Public Utilities Commission and from the ratepayers' perspective. The Office of the Independent Ratepayer Advocate may evaluate and comment on the efficiency, equity, and fiscal feasibility of the San Francisco Public Utilities Commission's contracts, investments, program expenditures and operations.

(b) Notwithstanding Charter section 3.104(6), the City Administrator shall appoint an Independent Ratepayer Advocate, who shall perform and manage the functions of the Office of Independent Ratepayer Advocate. The Independent Rate Payer Advocate shall have at least ten years of experience in utility rates methodology and analysis, and at least ten years of experience relevant to the operation of water, wastewater or power utilities. The City Administrator shall provide sufficient staff and resources to perform the functions defined in this Section.

(c) The Office of the Independent Ratepayer Advocate may, at its discretion, hold public meetings and provide timely recommendations to the Rate Fairness Board, the San Francisco Public Utilities Commission, and the Board of Supervisors regarding rate proposals, budgets, bond issuance, contracts, investments, program expenditures and operations.

(d) The Office of the Independent Ratepayer Advocate shall have the opportunity to comment on utility rates proposed by the San Francisco Public Utilities Commission at any meeting of Rate Fairness Board, San Francisco Public Utilities Commission and Board of Supervisors where the meeting agenda includes the discussion of utility rates proposed by the San Francisco Public Utilities Commission. The Office of the Independent Ratepayer Advocate shall have at least the same amount of time at such meetings to provide such comments as the Boards or Commission allocate to the San Francisco Public Utilities Commission staff representatives.

(e) The Office of the Independent Ratepayer Advocate may accept ratepayer inquiries, and provide appropriate explanations regarding proposed rates designed to enhance ratepayer understanding of rate-setting methodologies, requirements and procedures. The Office of the Independent Ratepayer Advocate may conduct ratepayer outreach activities.

(f) The San Francisco Public Utilities Commission shall fully cooperate with the Office of the Independent Ratepayer Advocate by providing prompt access to documents and other information reasonably related to proposed utilities rates.

(g) Failure to comply with any provision of this Section will not invalidate, or serve as grounds to challenge or invalidate any rates adopted pursuant to Charter Section 8B.125.

(h) The costs of providing the services of the Office of the Independent Rate Payer Advocate shall be paid from revenues of the utility rates that are the subject matter of those services, as adopted by the Public Utilities Commission under Section 8B.125, that have been appropriated for such services by the San Francisco Public Utilities Commission, the Mayor and the Board of Supervisors in accordance with the budget and fiscal provisions of the Charter.

(i) Notwithstanding any other provision of this Charter, the Ratepayer Advocate shall be subject to confirmation by the Board of Supervisors within 60 days of receiving notice of the appointment from the City Administrator. The Ratepayer Advocate appointment shall become effective unless the Board disapproves the appointment not later than 50 days from the date that the Clerk of the Board receives the notice of appointment. The City Administrator may remove the Ratepayer Advocate subject to approval by the Board of Supervisors.

SEC. 8B.131. SEVERABILITY.

If any part or provision of the amendments to the Charter provided herein, or their application to any person or circumstance is held invalid, the remainder of the amendments, including their application to other persons or circumstances, shall not be affected by such a holding and shall continue in force and effect. To this end, these amendments are severable.

SEC. 9.107. REVENUE BONDS.

The Board of Supervisors is hereby authorized to provide for the issuance of revenue bonds. Revenue bonds shall be issued only with the assent of a majority of the voters upon any proposition for the issuance of revenue bonds, except that no voter approval shall be required with respect to revenue bonds:

1. Approved by three-fourths of all the Board of Supervisors if the bonds are to finance buildings, fixtures or equipment which are deemed necessary by the Board of Supervisors to comply with an order of a duly constituted state or federal authority having jurisdiction over the subject matter;
2. Approved by the Board of Supervisors prior to January 1, 1977;
3. Approved by the Board of Supervisors if the bonds are to establish a fund for the purpose of financing or refinancing for acquisition, construction or rehabilitation of housing in the City and County;
4. Authorized and issued by the Port Commission for any Port-related purpose and secured solely by Port revenues, or authorized and issued for any Airport-related purpose and secured solely by Airport revenues;
5. Issued for the proposes of assisting private parties and not-for-profit entities in the financing and refinancing of the acquisition, construction, reconstruction or equipping of any improvement for industrial, manufacturing, research and development, commercial and energy uses or other facilities and activities incidental thereto, provided the bonds are not secured or payable from any monies of the City and County or its commissions.
6. Issued for the purpose of the reconstruction or replacement of existing water facilities or electric power facilities or combinations of water and electric power facilities under the jurisdiction of the Public Utilities Commission, when authorized by resolution adopted by a three-fourths affirmative vote of all members of the Board of Supervisors.

7. Approved and authorized by the Board of Supervisors and secured solely by an assessment imposed by the City.

8. Issued to finance or refinance the acquisition, construction, installation, equipping, improvement or rehabilitation of equipment or facilities for renewable energy and energy conservation, or other utility facilities pursuant to Section 16.101 of this Charter.

Except as expressly provided in this Charter, all revenue bonds may be issued and sold in accordance with state law or any procedure provided for by ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
THERESA L. MUELLER
Deputy City Attorney

LEGISLATIVE DIGEST

[San Francisco Clean Energy Act]

A proposal to amend the Charter of the City and County by amending Sections 8B.120, 8B.123, and 9.107, and adding Sections 8B.128 through 8B.131, to: (i) address the crisis of global climate change by moving San Francisco from fossil fuels to clean, sustainable energy production, (ii) ensure environmentally sustainable and affordable electric supplies for residents, businesses, and City departments, (iii) require the Public Utilities Commission to determine the most effective means of providing clean, sustainable, reliable and reasonably-priced electric service to San Francisco residents, businesses and City departments, and (iv) establish an Independent Ratepayer Advocate to represent the interests of San Franciscans that purchase utility services from the City by evaluating and making recommendations on utility rate proposals prepared by the San Francisco Public Utilities Commission under Charter section 8B.125.

Existing Law

Existing law provides that the Public Utilities Commission ("Commission") is responsible for management and control of the water and energy supplies and utilities of the City and County of San Francisco. The Commission operates subject to the Charter's provisions governing administrative and financial matters, including the appointment of personnel, execution of contracts, expenditure of funds, setting of rates, and issuance of debt.

Amendments to Current Law**Charter Sections Amended****SEC. 8B.120. PREAMBLE.**

Charter Section 8B.120 would be amended to establish the following Commission's goals:

- Establishing long-term integrated resource plan that sets forth in one document the City's requirements for transmission, distribution and electricity resources over the next ten years.
- Evaluating the benefits of local control over electric service, including cost savings and control over development of clean energy and energy efficiency and evaluating the

benefits of a full-service 100% clean public power system in the City to sell power directly to consumers consistent with the U.S. Supreme Court's 1940 interpretation of the Raker Act.

- Investigating ways to improve electric service and reduce costs to customers, including through measures such as Community Choice Aggregation.
- Exploring alternatives to deliver the City's Hetch Hetchy electricity to the City after the present contract with Pacific Gas and Electric Co. for such delivery expires.

SEC. 8B.123. PLANNING AND REPORTING.

Charter Section 8B.123 would be amended to require that the Commission produce a comprehensive study of options for providing clean, secure, cost effective electricity for City departments and residents and businesses of San Francisco. The study, which would be reviewed by independent experts, would consider, without limitation, the following:

- Transmission needs to transport Hetch Hetchy generation and cost-effective renewable resources into the City. Alternatives to be evaluated would include at a minimum, construction of City owned transmission lines, contracts or joint transmission projects with other municipalities and participation in the California Independent System Operator transmission markets.
- Transmission and distribution needs within the City to support reliability and facilitate distributed generation and renewables, including connections between substations and the 115 and 230 kV transmission systems within the City, and transmission and distribution needs to meet new City developments.
- Resources needed to meet municipal electric loads, Community Choice Aggregation loads, and other potential City loads, including options to maximize cost-effective energy efficiency and demand-reduction and local and remote renewable resources.
- Cost-effective options to reduce Greenhouse Gas Emissions from the electricity sector and to offset greenhouse gas emissions from other sectors.
- The costs and benefits of municipalization of the electric system in San Francisco, including the acquisition, construction, or completion of any public utility pursuant to Charter Section 16.101.

The plan would include a workforce development component to train and place individuals in jobs related to the acquisition, reconstruction, replacement, expansion, repair, or improvement of energy facilities under the jurisdiction of the Public Utilities Commission.

This Section would require that, if after reviewing the Commission's report and recommendations of the independent experts the Board of Supervisors finds that the public interest or necessity demands, the Board of Supervisors must direct the Commission to immediately prepare a plan for acquiring the electric system that serves the City through acquiring, constructing or operating electric facilities.

SEC. 9.107. REVENUE BONDS.

Charter Section 9.107(8) would be amended to provide for the issuance of revenue bonds for utility facilities.

Charter Sections Added

SEC. 8B.128. LABOR RELATIONS.

Charter Section 8B.128 would be added to the Charter to require that employees of an incumbent utility coming to the City as a result of this measure would be protected in the following manner:

- Employees of the incumbent utility who become City employees as a result of this measure would not suffer any loss or reduction of compensation, seniority, benefits or other employee rights and protections as of the effective date of this Section.
- Employees of the incumbent utility who become City employees as a result of this measure would be granted by the City the date of hire seniority they possessed with the privately held utility on the date of the City's acquisition for purposes of calculating vacation and sick leave.
- Employees of the incumbent utility who become City employees as a result of this measure would not involuntarily forfeit any rights or benefits they held under the incumbent utility's defined benefit plan.

SEC. 8B.129. CLEAN AND RENEWABLE ENERGY MANDATES.

Section 8B.129 would be added to the Charter to require that the Commission rely on clean and renewable energy resources to meet the City's electric needs. The Commission would be required to develop and implement aggressive energy efficiency measures to reduce the City's electric needs. The City would establish the following requirements for reliance on clean and renewable energy resources: (1) by the year 2012, the Commission would ensure that at least 107 megawatts of the City's electricity needs are met through the use of clean resources; (2) by the year 2017, the Commission would ensure that 51% of the City's

electricity needs are met through the use of clean energy resources; (3) by the year 2030, the Commission would ensure that 75% of the City's electricity needs are met through the use of clean energy resources; and (4) by the year 2050, the Commission would ensure that 100% of the City's electricity needs are met through the use of clean energy resources.

This Section would also require the Commission to file semi-annual reports with the Board of Supervisors setting forth all of its efforts to meet the requirements for using renewable energy resources set forth in this Section.

This Section would allow the Board of Supervisors by a 2/3 vote to modify the mandates established by this section if it finds that such modification serves the public interest.

SEC. 8B.130. RATEPAYER ADVOCATE.

Section 8B.131 would be added to the Charter to establish an Independent Ratepayer Advocate to represent the interests of San Franciscans that purchase utility services from the City by evaluating and making recommendations on utility rate proposals prepared by the San Francisco Public Utilities Commission for utility services under its jurisdiction, including water, clean water, and energy services. The Independent Ratepayer Advocate would be appointed by the City Administrator and subject to confirmation by the Board of Supervisors.

Key Changes from the Third Draft of the Charter Amendment

- The modification proposed to Section 8B.124 regarding revenue bonds issued by the Public Utilities Commission has been deleted.
- The title of Section 8B.128 has been changed to Employees of Incumbent Utility. The section has been further modified to delete the following provisions: (b), (c), (d), (f), and (g).
- The title of Section 8B.129 has been changed to Clean and Renewable Energy Mandates. A new subsection (b) has been added to require the Commission to develop aggressive energy efficiency goals to reduce the City's electric needs. A new subsection (e) has been added to allow the Board of Supervisors to modify the mandates established in this section.
- The proposed new Section 8B.130, entitled Use of Power Revenues, has been deleted.
- Section 8B.131, entitled Ratepayer Advocate, has been renamed Independent Ratepayer Advocate and renumbered to 8B.130. The provision has been expanded to provide additional detail about the appointment and duties of the ratepayer advocate.

