

Senate Bill No. 362—Senators Titus, Care, Carlton, O’Connell, Porter, Coffin, Amodei, Raggio, Rhoads, Schneider, Shaffer, Townsend, Washington and Wiener

Joint Sponsors: Assemblymen Perkins, Bache, Manendo, Parks, Buckley, Neighbors, Anderson, Dini, Freeman, Giunchigliani, Lee, Leslie, McClain, Mortenson, Ocegüera, Smith, Tiffany and Von Tobel

CHAPTER.....

AN ACT relating to utilities; consolidating and revising the process for reviewing applications for permits, licenses and other approvals by the public utilities commission of Nevada and certain other state and local entities for the construction of certain utility facilities; requiring the commission and other state and local entities to consider such an application in conjunction with any federal proceedings concerning the construction of that facility; making various changes to the Utility Environmental Protection Act; and providing other matters properly relating thereto.

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

Section 1. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this act.

Sec. 2. *“Appropriate federal agency” means a federal agency responsible for the enforcement of environmental laws whose approval is required for the construction of a utility facility.*

Sec. 3. *“Environmental review” includes, without limitation, an environmental assessment and environmental impact statement.*

Sec. 4. 1. *“Other permitting entity” means any state or local entity:*

(a) That is responsible for the enforcement of environmental laws and whose approval is required for the construction of a utility facility, including, without limitation, the state environmental commission, the state department of conservation and natural resources and a local air pollution control board; or

(b) Whose approval is required for granting any variance, special use permit, conditional use permit or other special exception under NRS 278.010 to 278.319, inclusive, or 278.640 to 278.675, inclusive, or any regulation or ordinance adopted pursuant thereto, that is required for the construction of a utility facility.

2. The term does not include the commission or the state engineer.

Sec. 5. 1. *Notwithstanding any specific statute, regulation or ordinance to the contrary, the process for the issuance by the commission or any other permitting entity of a permit, license or other approval for the construction of a utility facility which is subject to the provisions of NRS 704.820 to 704.900, inclusive, and sections 2 to 8, inclusive, of this act must be conducted in accordance with those provisions.*

2. No provision of NRS 704.820 to 704.900, inclusive, and sections 2 to 8, inclusive, of this act exempts or is intended to exempt the construction of a utility facility from any requirements that are or may be imposed on the construction of the utility facility by the Federal Government.

Sec. 6. *If a public utility that is subject to the provisions of NRS 704.741 to 704.751, inclusive, applies to the commission for a permit for the construction of a utility facility:*

1. The commission has exclusive jurisdiction with regard to the determination of whether a need exists for the utility facility; and

2. No other permitting entity may consider, in its review of any application for a permit, license or other approval for the construction of the utility facility, whether a need exists for the utility facility.

Sec. 7. *1. Except as otherwise provided in this subsection, if an environmental review relating to the construction of a utility facility in its entirety, or to the construction of any portion of a utility facility, has already been conducted by an appropriate federal agency or by a state, regional or local agency, the commission and each other permitting entity:*

(a) Shall accept and incorporate the findings and conclusions made in that review into any application for a permit, license or other approval for the construction of the utility facility which is filed with the commission or other permitting entity; and

(b) Shall not conduct any duplicative environmental review on the application.

The commission or other permitting entity need not comply with the provisions of this subsection if the commission or other permitting entity has already completed its own environmental review.

2. The commission and other permitting entities shall cooperate with each other and the appropriate federal agencies on applications for permits, licenses and other approvals to construct a utility facility and coordinate their activities, including, without limitation, conducting hearings or environmental reviews, to avoid duplication of activities.

Sec. 8. *1. Except as otherwise required to comply with federal law:*

(a) Not later than 150 days after a person has filed an application regarding a utility facility pursuant to subsection 1 of NRS 704.870:

(1) The commission shall grant or deny approval of that application; and

(2) Each other permitting entity shall, if an application for a permit, license or other approval for the construction of the utility facility was filed with the other permitting entity on or before the date on which the applicant filed the application pursuant to subsection 1 of NRS 704.870, grant or deny the application filed with the other permitting entity.

(b) Not later than 120 days after a person has filed an amended application regarding a utility facility pursuant to subsection 2 of NRS 704.870:

(1) The commission shall grant or deny approval of the amended application; and

(2) Each other permitting entity shall, if an application for a permit, license or other approval for the construction of the utility facility was filed with the other permitting entity on or before the date on which the applicant filed with the appropriate federal agency an application for approval for the construction of the utility facility, grant or deny the amended application filed with the other permitting entity.

2. *The commission or other permitting entity shall make its determination upon the record and may grant or deny the application as filed, or grant the application upon such terms, conditions or modifications of the construction, operation or maintenance of the utility facility as the commission or other permitting entity deems appropriate.*

3. *The commission shall serve a copy of its order and any opinion issued with it upon each party to the proceeding before the commission.*

Sec. 9. NRS 704.830 is hereby amended to read as follows:

704.830 As used in NRS 704.820 to 704.900, inclusive, *and sections 2 to 8, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 704.840 to 704.860, inclusive, *and sections 2, 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 10. NRS 704.860 is hereby amended to read as follows:

704.860 "Utility facility" means:

1. Electric generating plants and their associated facilities, other than plants and their associated facilities that are *or will be* located ~~in counties~~ *entirely within the boundaries of a county* whose population is 100,000 or more. ~~It~~ *As used in this subsection, "associated facilities" includes, without limitation, any facilities for the storage, transmission or treatment of water, including, without limitation, facilities to supply water or for the treatment or disposal of wastewater, which support or service an electric generating plant.*

2. Electric transmission lines and transmission substations *that:*

(a) *Are* designed to operate at 200 kilovolts or more ~~and~~ ;

(b) *Are* not required by local ordinance to be placed underground ~~when~~ ; and

(c) *Are* constructed outside any incorporated city. ~~It~~

3. Gas transmission lines, storage plants, compressor stations and their associated facilities when constructed outside ~~any~~ :

(a) *Any* incorporated city; and

(b) *Any county whose population is 100,000 or more.*

4. Water storage, transmission and treatment facilities, other than facilities for the storage, transmission or treatment of water from mining operations. ~~It and~~

5. Sewer transmission and treatment facilities.

Sec. 11. NRS 704.870 is hereby amended to read as follows:

704.870 1. ~~A~~ *Except as otherwise provided in subsection 2, a person who applies for wishes to obtain a permit for a utility facility* must file with the commission an application, in such *a* form as the commission prescribes, containing:

(a) A description of the location and of the utility facility to be built thereon;

(b) A summary of any studies which have been made of the environmental impact of the facility; and

(c) A description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits or detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility.

A copy or copies of the studies referred to in paragraph (b) must be filed with the commission and be available for public inspection.

2. *If a person wishes to obtain a permit for a utility facility and a federal agency is required to conduct an environmental analysis of the proposed utility facility, the person must:*

(a) Not later than the date on which the person files with the appropriate federal agency an application for approval for the construction of the utility facility, file with the commission and each other permitting entity an application, in such a form as the commission or other permitting entity prescribes, containing:

(1) A general description of the proposed utility facility; and

(2) A summary of any studies which the applicant anticipates will be made of the environmental impact of the facility; and

(b) Not later than 30 days after the issuance by the appropriate federal agency of a final environmental assessment or environmental impact statement relating to the construction of the utility facility:

(1) File with the commission an amended application that complies with the provisions of subsection 1; and

(2) File with each other permitting entity an amended application for a permit, license or other approval for the construction of the utility facility.

3. A copy of ~~the~~ *each* application *and amended application filed with the commission* must be filed with the administrator of the division of environmental protection of the state department of conservation and natural resources.

~~3-1~~ 4. Each application *and amended application filed with the commission* must be accompanied by:

(a) Proof of service of a copy of the application *or amended application* on the clerk of each local government in the area in which any portion of the facility is to be located, both as primarily and as alternatively proposed; and

(b) Proof that public notice thereof was given to persons residing in the municipalities entitled to receive notice pursuant to paragraph (a) by the publication of a summary of the application *or amended application* in newspapers published and distributed in the area in which the utility facility is proposed to be located.

Sec. 12. NRS 704.885 is hereby amended to read as follows:

704.885 1. The parties to a permit proceeding include:

(a) The applicant.

(b) The division of environmental protection of the state department of conservation and natural resources.

(c) Each local government entitled to receive service of a copy of the application pursuant to subsection ~~3-1~~ 4 of NRS 704.870, if it has filed with the commission a notice of intervention as a party, within 30 days after the date it was served with a copy of the application.

(d) Any *natural* person residing in a local government entitled to receive service of a copy of the application pursuant to subsection ~~3-1~~ 4 of NRS 704.870, if such a person has petitioned the commission for leave to intervene as a party within 30 days after the date of the published notice and if the petition has been granted by the commission for good cause shown.

(e) Any domestic nonprofit corporation or association, formed in whole or in part to promote conservation of natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located, if it has filed with the commission a notice of intent to be a party within 30 days after the date of the published notice.

2. Any person may make a limited appearance in the proceeding by filing a statement of position within 30 days after the date of the published notice. A statement filed by a person making a limited appearance becomes part of the record. No person making a limited appearance has the right to present oral testimony or cross-examine witnesses.

3. The commission may, for good cause shown, grant a petition for leave to intervene as a party to participate in subsequent phases of the proceeding, filed by a municipality, government agency, person or organization who is identified in paragraph (c), (d) or (e) of subsection 1, but who failed to file in a timely manner a notice of intervention, a petition for leave to intervene or a notice of intent to be a party, as the case may be.

Sec. 13. NRS 704.890 is hereby amended to read as follows:

704.890 1. ~~{Within 150 days after a person has filed an application for a permit, the commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the utility facility as the commission deems appropriate.~~

~~—2.}~~ Except as otherwise provided in subsection ~~{5.}~~ 3, the commission may not grant a permit for the construction, operation and maintenance of a utility facility, either as proposed or as modified by the commission, to a person unless it finds and determines:

(a) The nature of the probable effect on the environment;

(b) *The extent to which the facility is needed to ensure reliable utility service to customers in this state;*

(c) *That the need for the facility balances any adverse effect on the environment;*

(d) That the facility represents the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives;

~~{(e)}~~ (e) That the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder ~~{; and~~
~~—(d)}~~ *and the applicant has obtained, or is in the process of obtaining, all other permits, licenses and approvals required by federal, state and local statutes, regulations and ordinances; and*

(f) That the facility will serve the public interest.

~~{3.}~~ 2. If the commission determines that the location of all or a part of the proposed facility should be modified, it may condition its permit upon such a modification.

~~{4. —A copy of the order and any opinion issued with it must be served upon each party.~~

~~—5.1 If the applicant has not obtained all the other permits, licenses and approvals required by federal, state and local statutes, regulations and ordinances as of the date on which the commission decides to issue a permit, the commission shall condition its permit upon the applicant obtaining those permits and approvals.~~

3. The requirements set forth in paragraph ~~(d)~~ (f) of subsection ~~12~~ 1 do not apply to any application for a permit which is filed by a state government or political subdivision thereof.

Sec. 14. NRS 704.891 is hereby amended to read as follows:

704.891 1. Any person other than a public utility who receives a permit *issued by the commission* pursuant to ~~subsection 2 of NRS 704.890 shall, on or before the date on which construction of a utility facility is commenced and on a date no later than 12 months before the scheduled date of commercial operation of that facility.~~ *NRS 704.820 to 704.900, inclusive, and sections 2 to 8, inclusive, of this act shall, as provided in subsection 2,* file with the commission reports which contain:

- ~~11.1~~ (a) The location, nature and capacity of that facility;
- ~~12.1~~ (b) The anticipated date for commercial operation of that facility;
- ~~13.1~~ (c) Information regarding whether any public utility in this state has contracted for the purchase of the capacity or other services of that facility; and
- ~~14.1~~ (d) Information regarding whether any capacity or other services of that facility is available for purchase by public utilities in this state.

2. *The reports required by subsection 1 must be filed:*

- (a) *On or before the date on which construction of a utility facility is commenced; and*
 - (b) *On a date not later than:*
 - (1) *Twelve months before the scheduled date of commercial operation of that facility; or*
 - (2) *Thirty days before the actual date of commercial operation of that facility,*
- whichever is earlier.*

Sec. 15. NRS 704.895 is hereby amended to read as follows:

704.895 1. Any party aggrieved by any order issued *by the commission* on an application for a permit may apply for a rehearing within 15 days after issuance of the order. Any party aggrieved by the final order of the commission on rehearing may obtain judicial review thereof by filing ~~to~~ a complaint in a district court within 30 days after the issuance of such final order. Upon receipt of such complaint, the commission shall forthwith deliver to the court a copy of the written transcript of the record of the proceeding before it and a copy of its decision and opinion entered therein, which ~~shall constitute~~ *constitutes* the record on judicial review.

2. The grounds for and the scope for review of the court ~~shall be~~ *are* limited to whether the opinion and order of the commission ~~is~~ *are:*

- (a) In conformity with the constitution and the laws of the State of Nevada and of the United States;

- (b) Supported by substantial evidence in the record;
- (c) Made in accordance with the procedures set forth in NRS 704.820 to 704.900, inclusive, *and sections 2 to 8, inclusive, of this act* or established order, rule or regulation of the commission; and
- (d) Arbitrary, capricious or an abuse of discretion.

Sec. 16. NRS 704.900 is hereby amended to read as follows:

704.900 The commission, in the discharge of its duties under NRS 704.820 to 704.900, inclusive, *and sections 2 to 8, inclusive, of this act*, or any other law, ~~is authorized to~~ *shall, to the extent practicable*, make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise. The commission ~~is~~ *may*, in the discharge of its duties under NRS 704.820 to 704.900, inclusive, ~~is further authorized to~~ *and sections 2 to 8, inclusive, of this act*, negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of the Congress, for cooperative efforts in permitting the construction, operation and maintenance of utility facilities in accord with the ~~purpose~~ *purposes* of NRS 704.820 to 704.900, inclusive, *and sections 2 to 8, inclusive, of this act*, and for the enforcement of the respective state laws regarding them.

Sec. 17. NRS 459.520 is hereby amended to read as follows:

459.520 1. The commission shall adopt regulations for the granting, renewal, modification, suspension, revocation and denial of permits.

2. If the local government within whose territory a facility for the treatment, storage or disposal of hazardous waste is to be located requires that a special use permit or other authorization be obtained for such a facility or activity, the application to the department for a permit to operate such a facility must show that local authorization has been obtained. *This requirement does not apply to an application for a permit to construct a utility facility that is subject to the provisions of NRS 704.820 to 704.900, inclusive, and sections 2 to 8, inclusive, of this act.*

3. Permits may contain terms and conditions which the department considers necessary and which conform to the provisions of regulations adopted by the commission.

4. Permits may be issued for any period of not more than 5 years.

5. A permit may not be granted or renewed if the director determines that granting or renewing the permit is inconsistent with any regulation of the commission relating to hazardous waste or with the plan for management of hazardous waste developed pursuant to NRS 459.485. The provisions of this subsection do not apply to a permit granted or under review before July 1, 1987.

6. The department may suspend or revoke a permit pursuant to the commission's regulations if the holder of the permit fails or refuses to comply with the terms of the permit or a regulation of the commission relating to hazardous waste.

Sec. 18. The amendatory provisions of this act apply only to an application for a permit, license or other approval to construct a utility facility that is filed on or after the effective date of this act. As used in this section, “utility facility” has the meaning ascribed to it in NRS 704.860, as amended by this act.

Sec. 19. This act becomes effective upon passage and approval.