

Amendment No. 21

Assembly Amendment to Assembly Bill No. 27 (BDR 58-551)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from A.B. 27.

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

BJE



Date: 3/15/2007

A.B. No. 27—Revises provisions relating to penalties assessed by the Public
Utilities Commission of Nevada. (BDR 58-551)



ASSEMBLY BILL NO. 27—COMMITTEE ON COMMERCE AND LABOR
(ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF NEVADA)

PREFILED JANUARY 26, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to penalties assessed by the Public Utilities Commission of Nevada. (BDR 58-551)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public utilities; authorizing the Public Utilities Commission of Nevada to assess administrative penalties in certain circumstances; requiring certain administrative fines assessed and collected by the Commission to be deposited in the State General Fund; authorizing the Commission to bring legal action in its own name to collect certain unpaid administrative fines; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, any person who violates certain provisions of Nevada public utilities law is subject to a civil penalty. (NRS 703.380) **Section 2** of this bill provides that any person who violates public utilities law is subject to an administrative fine assessed by the Public Utilities Commission of Nevada. **Section 2** also authorizes the Commission to bring legal action in its own name to collect any unpaid administrative fine that it has assessed ~~and~~ *and provides for the award of costs and reasonable attorney's fees to the prevailing party.*

Sections 3 and 4 of this bill ~~remove a limit on~~ *change the term "penalty" to "fee" for* certain fees imposed by the Commission on utilities that are delinquent in paying a certain assessment. (NRS 704.035, 704.309) **Section 11** of this bill repeals provisions regarding administrative penalties for a specified violation of public utilities law. (NRS 703.154, 704.430, 704.6881)

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

Section 1. NRS 703.154 is hereby amended to read as follows:

703.154 1. The Commission may adopt such regulations as are necessary to ensure the safe operation and maintenance of all storage facilities and intrastate pipelines in this State which are used to store and transport natural gas, liquefied petroleum gas, in its liquid or vapor form, or any mixture thereof. Regulations adopted pursuant to this subsection do not apply to activities that are subject to the provisions of NRS 590.465 to 590.645, inclusive, or chapter 704 of NRS.

2. If the Commission and any other governmental entity or agency of the State have coexisting jurisdiction over the regulation of such storage facilities and intrastate pipelines, the Commission has the final authority to regulate those facilities and pipelines and to take such actions as are necessary to carry out the regulations adopted pursuant to subsection 1.

3. A person who violates any of the provisions of a regulation adopted by the Commission pursuant to subsection 1 is liable for ~~{a civil penalty}~~ *an administrative fine* not to exceed \$1,000 per day for each day of the violation and not to exceed \$200,000 for any related series of violations. The amount of the ~~{civil penalty}~~ *administrative fine* must be determined ~~{and may be compromised}~~ in the manner provided in NRS 703.380.

Sec. 2. NRS 703.380 is hereby amended to read as follows:

703.380 1. Unless another ~~{penalty}~~ *administrative fine* is specifically provided, ~~{any}~~ *a person, including, without limitation, a* public utility, alternative seller, provider of discretionary natural gas service, ~~{or}~~ provider of new electric resources ~~{or holder of any certificate of registration, license or permit issued by the Commission,}~~ or any officer, agent or employee of a public utility, alternative seller, provider of discretionary natural gas service, ~~{or}~~ provider of new electric resources *or holder of any certificate of registration, license or permit issued by the Commission* who:

(a) Violates any applicable provision of this chapter or chapter 704, 704B, 705 or 708 of NRS ~~{or}~~, *including, without limitation, the failure to pay any applicable tax, fee or assessment;*

(b) Violates any rule or regulation of the Commission; or

(c) Fails, neglects or refuses to obey any order of the Commission or any order of a court requiring compliance with an order of the Commission,

is liable for ~~{a civil penalty}~~ *an administrative fine, to be assessed by the Commission after notice and the opportunity for a hearing, in an amount* not to exceed ~~\$1,000~~ *\$10,000* per day for each day of the violation and not to exceed ~~\$100,000~~ *\$1,000,000* for any related series of violations.

2. ~~{The amount of any civil penalty to be imposed pursuant to this section, and the propriety of any compromise of a penalty, must be determined by a court of competent jurisdiction upon the complaint of the Commission.}~~

3. ~~{Subject to the approval of the court, any civil penalty may be compromised by the Commission.}~~ In determining the amount of the ~~{penalty, or the amount agreed upon in compromise,}~~ *administrative fine, the Commission shall consider*

the appropriateness of the ~~[penalty]~~ fine to the size of the business of the person charged, the gravity of the violation, ~~[and]~~ the good faith of the person charged in attempting to achieve compliance ~~[and]~~ after notification of a violation ~~[, must be considered.]~~

~~4. Any ~~[penalty]~~ and any repeated violations committed by the person charged.~~

3. An administrative fine assessed pursuant to this section is not a cost of service of a public utility and may not be included in any new application by a public utility for a rate adjustment or rate increase.

4. All money collected by the Commission as an administrative fine pursuant to this section must be deposited in the State General Fund.

5. The Commission may bring an appropriate action in its own name for the collection of any administrative fine that is assessed pursuant to this section. A court shall award costs and reasonable attorney's fees to the prevailing party in an action brought pursuant to this subsection.

6. The administrative fine prescribed by this section is in addition to any other remedies, other than a monetary fine, provided by law, including, without limitation, the authority of the Commission to revoke a certificate of public convenience and necessity, license or permit pursuant to NRS 703.377.

Sec. 3. NRS 704.035 is hereby amended to read as follows:

704.035 1. On or before June 15 of each year, the Commission shall mail revenue report forms to all public utilities, providers of discretionary natural gas service and alternative sellers under its jurisdiction, to the address of those utilities, providers of discretionary natural gas service and alternative sellers on file with the Commission. The revenue report form serves as notice of the Commission's intent to assess such entities, but failure to notify any such entity does not invalidate the assessment with respect thereto.

2. Each public utility, provider of discretionary natural gas service and alternative seller subject to the provisions of NRS 704.033 shall complete the revenue report referred to in subsection 1, compute the assessment and return the completed revenue report to the Commission accompanied by payment of the assessment and any ~~[penalty]~~ fee due, pursuant to the provisions of subsection 5.

3. The assessment is due on July 1 of each year, but may, at the option of the public utility, provider of discretionary natural gas service and alternative seller, be paid quarterly on July 1, October 1, January 1 and April 1.

4. The assessment computed by the public utility, provider of discretionary natural gas service or alternative seller is subject to review and audit by the Commission, and the amount of the assessment may be adjusted by the Commission as a result of the audit and review.

5. Any public utility, provider of discretionary natural gas service or alternative seller failing to pay the assessment provided for in NRS 704.033 on or before August 1, or if paying quarterly, on or before August 1, October 1, January 1 or April 1, shall pay, in addition to such assessment, a ~~[penalty]~~ fee of 1 percent of the total unpaid balance for each month or portion thereof that the assessment is delinquent ~~[and]~~, or \$10, whichever is greater, but no ~~[penalty]~~ fee may exceed \$1,000 for each delinquent payment.

6. When a public utility, provider of discretionary natural gas service or alternative seller sells, transfers or conveys substantially all of its assets or, if applicable, its certificate of public convenience and necessity, the Commission shall determine, levy and collect the accrued assessment for the current year not later than 30 days after the sale, transfer or conveyance, unless the transferee has assumed liability for the assessment. For purposes of this subsection, the jurisdiction of the Commission over the selling, transferring or conveying public utility, provider of discretionary natural gas service or alternative seller continues until it has paid the assessment.

7. The Commission may bring an appropriate action in its own name for the collection of any assessment and ~~{penalty}~~ fee which is not paid as provided in this section.

8. The Commission shall, upon collection, transfer to the Account for the Consumer's Advocate that portion of the assessments collected which belongs to the Consumer's Advocate.

Sec. 4. NRS 704.309 is hereby amended to read as follows:

704.309 1. The Commission shall levy and collect an annual assessment from each railroad subject to the jurisdiction of the Commission that transports cargo into, out of or through this State to support the activities of the Commission relating to railroad safety.

2. The annual assessment levied on railroads:

(a) Must be equal to the costs incurred by the Commission that are not offset by the fees paid pursuant to NRS 459.512.

(b) Must be not more than 1 cent per ton of cargo transported by the railroads into, out of or through this State during the immediately preceding calendar year.

3. On or before September 1 of each year, the Commission shall:

(a) Calculate the amount of the assessment to be levied pursuant to this section for the previous fiscal year; and

(b) Mail to each railroad subject to the provisions of this section to the current address of the railroad on file with the Commission a notice indicating the amount of the assessment. The failure of the Commission to so notify a railroad does not invalidate the assessment.

4. An assessment levied pursuant to this section is due on or before November 1 of each year. Each railroad that is subject to the provisions of this section which fails to pay the assessment on or before December 1, shall pay, in addition to the assessment, a ~~{penalty}~~ fee of 1 percent of the total unpaid balance for each month or portion thereof that the assessment is delinquent ~~{}~~ or \$10, whichever is greater, except that no ~~{penalty}~~ fee may exceed \$1,000 for each delinquent payment.

5. If a railroad sells or transfers its certificate of public convenience and necessity or sells or transfers substantially all of its assets, the Commission shall calculate, levy and collect the accrued assessment for the current year not later than 30 days after the sale or transfer, unless the purchaser or transferee has assumed liability for the assessment. For the purposes of this subsection, the jurisdiction of the Commission over the sale or transfer of a railroad continues until the assessment of the railroad has been paid.

6. The Commission may bring an appropriate action in its own name for the collection of any assessment and ~~penalty~~ *fee* that is not paid pursuant to this section.

Sec. 5. NRS 704.3296 is hereby amended to read as follows:

704.3296 As used in NRS 704.3296 to ~~704.430,~~ **704.410**, inclusive, unless the context otherwise requires, "electric utility" has the meaning ascribed to it in NRS 704.7571.

Sec. 6. NRS 704.360 is hereby amended to read as follows:

704.360 All hearings and investigations under NRS 704.3296 to ~~704.430,~~ **704.410**, inclusive, shall be conducted substantially as is provided for hearings and investigations of tolls, charges and service.

Sec. 7. NRS 704.400 is hereby amended to read as follows:

704.400 Every order refusing or granting any certificates of public convenience, or granting or refusing permission to discontinue, modify or restrict service, as provided in NRS 704.3296 to ~~704.430,~~ **704.410**, inclusive, is prima facie lawful from the date of the order until changed or modified by the order of the Commission or pursuant to NRS 703.373 to 703.376, inclusive.

Sec. 8. NRS 704.600 is hereby amended to read as follows:

704.600 Any officer, agent or employee of any public utility who:

1. Willfully fails or refuses to fill out and return any blanks as required by this chapter;

2. Willfully fails or refuses to answer any questions therein propounded;

3. Knowingly or willfully gives a false answer to the questions;

4. Evades the answer to any question where the fact inquired of is within his knowledge; or

5. Upon proper demand, willfully fails or refuses to exhibit to the Commission or any Commissioners, or any person also authorized to examine the same, any book, paper or account of such public utility which is in his possession or under his control,

is subject to the ~~penalty~~ *administrative fine* prescribed in NRS 703.380.

Sec. 9. NRS 704.675 is hereby amended to read as follows:

704.675 Every cooperative association or nonprofit corporation or association and every other supplier of services described in this chapter supplying those services for the use of its own members only is hereby declared to be affected with a public interest, to be a public utility, and to be subject to the jurisdiction, control and regulation of the Commission for the purposes of NRS 703.191, 704.330, 704.350 to ~~704.430,~~ **704.410**, inclusive, but not to any other jurisdiction, control and regulation of the Commission or to the provisions of any section not specifically mentioned in this section.

Sec. 10. NRS 704.6881 is hereby amended to read as follows:

704.6881 The Commission shall, by regulation:

1. Establish standards of performance and reporting regarding the provision of interconnection, unbundled network elements and resold services, which encourage competition and discourage discriminatory conduct in the provision of local telecommunication services; and

2. Notwithstanding the provisions of NRS 703.320 to the contrary, establish penalties and expedited procedures for imposing penalties upon a provider of

telecommunication services for actions that are inconsistent with the standards established by the Commission pursuant to subsection 1. Such penalties may include financial payment to the complaining provider of telecommunication services for a violation of the standards established by the Commission pursuant to subsection 1, provided that any penalty paid must be deducted, with interest, from any other award under any other judicial or administrative procedure for the same conduct in the same reporting period. Any penalty imposed pursuant to this subsection is in lieu of the ~~civil penalties~~ *administrative fine* set forth in NRS 703.380 and must be:

(a) Imposed for violating a standard or standards established by regulations of the Commission pursuant to subsection 1;

(b) Determined by the Commission to further the goal of encouraging competition or discouraging discriminatory conduct; and

(c) In an amount reasonable to encourage competition or discourage discriminatory conduct.

Sec. 11. NRS 704.430 is hereby repealed.

Sec. 12. This act becomes effective on July 1, 2007

TEXT OF REPEALED SECTION

704.430 Penalty; separate offenses.

1. Any person, firm, association or corporation who violates any provisions of NRS 704.3296 to 704.430, inclusive, shall be punished by a fine of not more than \$250.

2. Each day's operation without a certificate as provided in NRS 704.3296 to 704.430, inclusive, or each day that service is discontinued, modified or restricted, as defined in NRS 704.3296 to 704.430, inclusive, must be considered a separate offense.