

Amendment No. 5

Senate Amendment to Senate Bill No. 86 (BDR 58-554)

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

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.

WLK



Date: 4/4/2007

S.B. No. 86—Revises provisions regulating utilities that furnish water or provide sewage disposal services. (BDR 58-554)



SENATE BILL NO. 86—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF NEVADA)

FEBRUARY 13, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions regulating utilities that furnish water or provide sewage disposal services. (BDR 58-554)

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

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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; revising provisions governing the issuance of certificates of public convenience and necessity for utilities that furnish water or provide sewage disposal services; requiring submission of plans to meet demands for water and sewage disposal services; increasing the threshold annual revenue level at which water supply or sewage disposal utilities are subject to the jurisdiction of the Public Utilities Commission of Nevada; requiring certain water supply or sewage disposal utilities to file a general rate application with the Commission according to a specified schedule; requiring water supply utilities to provide for the maintenance of *certain* fire hydrants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the regulation of utilities that furnish water and utilities that provide sewage disposal services by the Public Utilities Commission of Nevada. (Chapter 704 of NRS) Existing law exempts from regulation by the Commission utilities that have gross sales for water and sewer services of \$5,000 or less during a 12-month period. (NRS 704.030) **Section 4** of this bill increases that threshold amount to \$25,000 or less during a 12-month period. Existing law also requires that a water supply utility furnish water to cities, towns, villages or hamlets for the purpose of fire protection. (NRS 704.660) **Section 8** of this bill requires that a water supply utility provide for the maintenance of *certain* fire hydrants. **Section 3** of this bill requires that a water supply or sewer utility with an annual gross operating revenue of \$1,000,000 or more for at least 1 year of the immediately preceding 3 years submit a plan to the Commission for satisfying the demands of its customers.

Additionally, existing law requires that some, but not all, public utilities must file general rate applications with the Commission according to a specified schedule. (NRS 704.110) **Section 5** of this bill requires that water supply or sewer utilities with an annual gross operating revenue of \$500,000 or more for at least 1 year of the immediately preceding 3 years file a general rate application with the Commission according to a specified schedule.

Under existing law, public utilities must obtain a certificate of public convenience and necessity from the Commission before beginning or continuing any operations or construction

related to the utility. (NRS 704.330) **Section 2** of this bill requires the Commission to consider the capabilities of existing water supply or sewer companies before issuing a certificate, and requires water supply utilities of a certain size to file a resource plan with the Commission according to a specified schedule.

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 and 3 of this act.

Sec. 2. *In determining whether to issue a certificate of public convenience and necessity that authorizes the construction, ownership, control or operation of any line, plant or system for the purpose of furnishing water for municipal, industrial or domestic purposes or services for the disposal of sewage, or both, the Commission shall consider whether another public utility or person is ready, willing and able to provide the services in the geographic area proposed by the applicant for the certificate.*

Sec. 3. *1. A public utility that furnishes water for municipal, industrial or domestic purposes or services for the disposal of sewage, or both, and which had an annual gross operating revenue of \$1,000,000 or more for at least 1 year during the immediately preceding 3 years shall, on or before March 1 of every third year, in the manner specified by the Commission, submit a plan to the Commission to provide sufficient water or services for the disposal of sewage to satisfy the demand made on its system by its customers.*

2. The Commission shall adopt regulations to provide for the contents of and the method and schedule for preparing, submitting, reviewing and approving the plan required pursuant to subsection 1.

3. Within 180 days after a public utility has filed a plan pursuant to subsection 1, the Commission shall issue an order accepting the plan as filed or specifying any portion of the plan it finds to be inadequate.

4. If a plan submitted pursuant to subsection 1 and accepted by the Commission pursuant to subsection 3 and any regulations adopted pursuant to subsection 2 identifies a facility for acquisition or construction, the facility shall be deemed to be a prudent investment and the public utility may recover all just and reasonable costs of planning and constructing or acquiring the facility.

5. All prudent and reasonable expenditures made by a public utility to develop a plan filed pursuant to subsection 1, including, without limitation, any environmental, engineering or other studies, must be recovered from the rates charged to the public utility's customers.

Sec. 4. NRS 704.030 is hereby amended to read as follows:

704.030 "Public utility" or "utility" does not include:

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

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

(a) They serve 25 persons or less; and

(b) Their gross sales for water or services for the disposal of sewage, or both, amounted to ~~[\$5,000]~~ **\$25,000** or less during the immediately preceding 12 months.

3. Persons not otherwise engaged in the business of furnishing, producing or selling water or services for the disposal of sewage, or both, but who sell or furnish

1 water or services for the disposal of sewage, or both, as an accommodation in an
2 area where water or services for the disposal of sewage, or both, are not available
3 from a public utility, cooperative corporations and associations or political
4 subdivisions engaged in the business of furnishing water or services for the disposal
5 of sewage, or both, for compensation, to persons within the political subdivision.

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

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

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

13 7. Persons who provide water from water storage, transmission and treatment
14 facilities if those facilities are for the storage, transmission or treatment of water
15 from mining operations.

16 **Sec. 5.** NRS 704.110 is hereby amended to read as follows:

17 704.110 Except as otherwise provided in NRS 704.075 and 704.68904 to
18 704.68984, inclusive, or as may otherwise be provided by the Commission pursuant
19 to NRS 704.095 or 704.097 or pursuant to the regulations adopted by the
20 Commission in accordance with subsection 4 of NRS 704.040:

21 1. If a public utility files with the Commission an application to make changes
22 in any schedule, including, without limitation, changes that will result in a
23 discontinuance, modification or restriction of service, the Commission shall
24 investigate the propriety of the proposed changes to determine whether to approve
25 or disapprove the proposed changes. If an electric utility files such an application
26 and the application is a general rate application or an application to clear its
27 deferred accounts, the Consumer's Advocate shall be deemed a party of record.

28 2. Except as otherwise provided in subsections 3 and 13, if a public utility
29 files with the Commission an application to make changes in any schedule, the
30 Commission shall issue a written order approving or disapproving, in whole or in
31 part, the proposed changes:

32 (a) For a public utility that is a PAR carrier, not later than 180 days after the
33 date on which the application is filed; and

34 (b) For all other public utilities, not later than 210 days after the date on which
35 the application is filed.

36 3. If a public utility files with the Commission a general rate application, the
37 public utility shall submit with its application a statement showing the recorded
38 results of revenues, expenses, investments and costs of capital for its most recent 12
39 months for which data were available when the application was prepared. Except as
40 otherwise provided in subsection 4, in determining whether to approve or
41 disapprove any increased rates, the Commission shall consider evidence in support
42 of the increased rates based upon actual recorded results of operations for the same
43 12 months, adjusted for increased revenues, any increased investment in facilities,
44 increased expenses for depreciation, certain other operating expenses as approved
45 by the Commission and changes in the costs of securities which are known and are
46 measurable with reasonable accuracy at the time of filing and which will become
47 effective within 6 months after the last month of those 12 months, but the public
48 utility shall not place into effect any increased rates until the changes have been
49 experienced and certified by the public utility to the Commission and the
50 Commission has approved the increased rates. The Commission shall also consider
51 evidence supporting expenses for depreciation, calculated on an annual basis,
52 applicable to major components of the public utility's plant placed into service
53 during the recorded test period or the period for certification as set forth in the

1 application. Adjustments to revenues, operating expenses and costs of securities
2 must be calculated on an annual basis. Within 90 days after the date on which the
3 certification required by this subsection is filed with the Commission, or within the
4 period set forth in subsection 2, whichever time is longer, the Commission shall
5 make such order in reference to the increased rates as is required by this chapter.
6 ~~{An electric utility}~~ *The following public utilities* shall *each* file a general rate
7 application pursuant to this subsection ~~{at least once every 24 months}~~ based on the
8 following schedule:

9 (a) An electric utility that primarily serves less densely populated counties
10 shall file a general rate application on or before October 3, 2005, and at least once
11 every 24 months thereafter.

12 (b) An electric utility that primarily serves densely populated counties shall file
13 a general rate application on or before November 15, 2006, and at least once every
14 24 months thereafter.

15 (c) *A public utility that furnishes water for municipal, industrial or domestic*
16 *purposes or services for the disposal of sewage, or both, which had an annual*
17 *gross operating revenue of \$500,000 or more for at least 1 year during the*
18 *immediately preceding 3 years and which had not filed a general rate application*
19 *with the Commission on or after July 1, 2005, shall file a general rate application*
20 *on or before June 30, 2008, and at least once every 36 months thereafter.* ~~It~~
21 *unless waived by the Commission pursuant to standards adopted by regulation of*
22 *the Commission.*

23 (d) *A public utility that furnishes water for municipal, industrial or domestic*
24 *purposes or services for the disposal of sewage, or both, which had an annual*
25 *gross operating revenue of \$500,000 or more for at least 1 year during the*
26 *immediately preceding 3 years and which had filed a general rate application*
27 *with the Commission on or after July 1, 2005, shall file a general rate application*
28 *on or before June 30, 2009, and at least once every 36 months thereafter.* ~~It~~
29 *unless waived by the Commission pursuant to standards adopted by regulation of*
30 *the Commission.*

31 *The Commission shall adopt regulations setting forth standards for waivers*
32 *pursuant to paragraphs (c) and (d) and for including the costs incurred by the*
33 *public utility in preparing and presenting the general rate application before the*
34 *effective date of any change in rates.*

35 4. In addition to submitting the statement required pursuant to subsection 3, a
36 public utility which purchases natural gas for resale may submit with its general
37 rate application a statement showing the effects, on an annualized basis, of all
38 expected changes in circumstances. If such a statement is filed, it must include all
39 increases and decreases in revenue and expenses which may occur within 210 days
40 after the date on which its general rate application is filed with the Commission if
41 such expected changes in circumstances are reasonably known and are measurable
42 with reasonable accuracy. If a public utility submits such a statement, the public
43 utility has the burden of proving that the expected changes in circumstances set
44 forth in the statement are reasonably known and are measurable with reasonable
45 accuracy. If the Commission determines that the public utility has met its burden of
46 proof:

47 (a) The Commission shall consider the statement submitted pursuant to this
48 subsection and evidence relevant to the statement in addition to the statement
49 required pursuant to subsection 3 as evidence in establishing just and reasonable
50 rates for the public utility; and

51 (b) The public utility is not required to file with the Commission the
52 certification that would otherwise be required pursuant to subsection 3.

1 5. If a public utility files with the Commission an application to make changes
2 in any schedule and the Commission does not issue a final written order regarding
3 the proposed changes within the time required by this section, the proposed changes
4 shall be deemed to be approved by the Commission.

5 6. If a public utility files with the Commission a general rate application, the
6 public utility shall not file with the Commission another general rate application
7 until all pending general rate applications filed by that public utility have been
8 decided by the Commission unless, after application and hearing, the Commission
9 determines that a substantial financial emergency would exist if the public utility is
10 not permitted to file another general rate application sooner. The provisions of this
11 subsection do not prohibit the public utility from filing with the Commission, while
12 a general rate application is pending, an application to recover the increased cost of
13 purchased fuel, purchased power, or natural gas purchased for resale pursuant to
14 subsection 7 or an application to clear its deferred accounts pursuant to subsection
15 9, if the public utility is otherwise authorized by those provisions to file such an
16 application.

17 7. A public utility may file an application to recover the increased cost of
18 purchased fuel, purchased power, or natural gas purchased for resale once every 30
19 days. The provisions of this subsection do not apply to:

- 20 (a) An electric utility using deferred accounting pursuant to NRS 704.187; or
21 (b) A public utility which purchases natural gas for resale and which adjusts its
22 rates on a quarterly basis between annual rate adjustment applications pursuant to
23 subsection 8.

24 8. A public utility which purchases natural gas for resale must request
25 approval from the Commission to adjust its rates on a quarterly basis between
26 annual rate adjustment applications based on changes in the public utility's
27 recorded costs of natural gas purchased for resale. If the Commission approves such
28 a request:

29 (a) The public utility shall file written notice with the Commission before the
30 public utility makes a quarterly rate adjustment between annual rate adjustment
31 applications. A quarterly rate adjustment is not subject to the requirements for
32 notice and a hearing pursuant to NRS 703.320 or the requirements for a consumer
33 session pursuant to subsection 1 of NRS 704.069.

34 (b) The public utility shall provide written notice of each quarterly rate
35 adjustment to its customers by including the written notice with a customer's
36 regular monthly bill. The public utility shall begin providing such written notice to
37 its customers not later than 30 days after the date on which the public utility files its
38 written notice with the Commission pursuant to paragraph (a). The written notice
39 that is included with a customer's regular monthly bill:

40 (1) Must be printed separately on fluorescent-colored paper and must not
41 be attached to the pages of the bill; and

42 (2) Must include the following:

43 (I) The total amount of the increase or decrease in the public utility's
44 revenues from the rate adjustment, stated in dollars and as a percentage;

45 (II) The amount of the monthly increase or decrease in charges for
46 each class of customer or class of service, stated in dollars and as a percentage;

47 (III) A statement that customers may send written comments or
48 protests regarding the rate adjustment to the Commission; and

49 (IV) Any other information required by the Commission.

50 (c) The public utility shall file an annual rate adjustment application with the
51 Commission. The annual rate adjustment application is subject to the requirements
52 for notice and a hearing pursuant to NRS 703.320 and the requirements for a
53 consumer session pursuant to subsection 1 of NRS 704.069.

(d) The proceeding regarding the annual rate adjustment application must include a review of each quarterly rate adjustment and a review of the transactions and recorded costs of natural gas included in each quarterly rate adjustment and the annual rate adjustment application. There is no presumption of reasonableness or prudence for any quarterly rate adjustment or for any transactions or recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application, and the public utility has the burden of proving reasonableness and prudence in the proceeding.

(e) The Commission shall not allow the public utility to recover any recorded costs of natural gas which were the result of any practice or transaction that was unreasonable or was undertaken, managed or performed imprudently by the public utility, and the Commission shall order the public utility to adjust its rates if the Commission determines that any recorded costs of natural gas included in any quarterly rate adjustment or the annual rate adjustment application were not reasonable or prudent.

9. Except as otherwise provided in subsection 10 and subsection 5 of NRS 704.100, if an electric utility using deferred accounting pursuant to NRS 704.187 files an application to clear its deferred accounts and to change one or more of its rates based upon changes in the costs for purchased fuel or purchased power, the Commission, after a public hearing and by an appropriate order:

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

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

10. Before allowing an electric utility to clear its deferred accounts pursuant to subsection 9, the Commission shall determine whether the costs for purchased fuel and purchased power that the electric utility recorded in its deferred accounts are recoverable and whether the revenues that the electric utility collected from customers in this State for purchased fuel and purchased power are properly recorded and credited in its deferred accounts. The Commission shall not allow the electric utility to recover any costs for purchased fuel and purchased power that were the result of any practice or transaction that was undertaken, managed or performed imprudently by the electric utility.

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

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

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

12. A utility facility identified in a 3-year plan submitted pursuant to NRS 704.741 and accepted by the Commission for acquisition or construction pursuant to NRS 704.751 and the regulations adopted pursuant thereto shall be deemed to be a prudent investment. The utility may recover all just and reasonable costs of planning and constructing such a facility.

13. A PAR carrier may, in accordance with this section and NRS 704.100, file with the Commission a request to approve or change any schedule to provide volume or duration discounts to rates for telecommunication service for an offering made to all or any class of business customers. The Commission may conduct a hearing relating to the request, which must occur within 45 days after the date the

request is filed with the Commission. The request and schedule shall be deemed approved if the request and schedule are not disapproved by the Commission within 60 days after the date the Commission receives the request.

14. As used in this section:

(a) "Electric utility" has the meaning ascribed to it in NRS 704.187.

(b) "Electric utility that primarily serves densely populated counties" has the meaning ascribed to it in NRS 704.187.

(c) "Electric utility that primarily serves less densely populated counties" has the meaning ascribed to it in NRS 704.187.

(d) "PAR carrier" has the meaning ascribed to it in NRS 704.68942.

Sec. 6. NRS 704.3296 is hereby amended to read as follows:

704.3296 As used in NRS 704.3296 to 704.430, inclusive, *and section 2 of this act*, unless the context otherwise requires, "electric utility" has the meaning ascribed to it in NRS 704.7571.

Sec. 7. NRS 704.430 is hereby amended to read as follows:

704.430 1. Any person, firm, association or corporation who violates any provisions of NRS 704.3296 to 704.430, inclusive, *and section 2 of this act*, shall be punished by a fine of not more than \$250.

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

Sec. 8. NRS 704.660 is hereby amended to read as follows:

704.660 1. Any public utility which furnishes, for compensation, any water for domestic purposes shall furnish each city, town, village or hamlet which it serves with a reasonably adequate supply of water at reasonable pressure for fire protection and at reasonable rates, all to be fixed and determined by the Commission.

2. The duty to furnish a reasonably adequate supply of water provided for in subsection 1 includes the laying of mains with all necessary connections for the proper delivery of the water for fire protection ~~and also the installing~~, *the installation* of appliances to assure a reasonably sufficient pressure for fire protection ~~and the maintenance of fire hydrants that are the property of the public utility and located either within a public right-of-way or upon private property to which the public utility is permitted reasonable access without cost.~~

3. The Commission may fix and determine reasonable rates and prescribe all installations and appliances adequate for the proper utilization and delivery of water for fire protection. The Commission may adopt regulations and practices to be followed by a utility in furnishing water for fire protection, and has complete jurisdiction of all questions arising under the provisions of this section.

4. All proceedings under this section must be conducted pursuant to NRS 703.320 to 703.370, inclusive, and 704.005 to 704.645, inclusive. All violations of any order made by the Commission under the provisions of this section are subject to the penalties for similar violations of the provisions of NRS 704.005 to 704.645, inclusive.

5. This section applies to and governs all public utilities furnishing water for domestic use on March 26, 1913, unless otherwise expressly provided in the charters, franchises or permits under which those utilities are acting. Each public utility which supplies water for domestic uses after March 26, 1913, is subject to the provisions of this section, regardless of any conditions to the contrary in any charter, franchise or permit of whatever character granted by any county, city, town, village or hamlet within this State, or of any charter, franchise or permit granted by any authority outside this State.

1 **Sec. 9.** A public utility that furnishes water for municipal, industrial or
2 domestic purposes or services for the disposal of sewage, or both, and which had an
3 annual gross operating revenue of \$1,000,000 or more during calendar year 2005,
4 calendar year 2006 or calendar year 2007 shall, on or before March 1, 2008, submit
5 to the Public Utilities Commission of Nevada the plan required pursuant to the
6 provisions of section 3 of this act.

7 **Sec. 10.** This act becomes effective on July 1, 2007.