

**MINUTES OF THE
SENATE COMMITTEE ON GROWTH AND INFRASTRUCTURE**

**Eighty-first Session
February 17, 2021**

The Senate Committee on Growth and Infrastructure was called to order by Chair Dallas Harris at 3:31 p.m. on Wednesday, February 17, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dallas Harris, Chair
Senator Chris Brooks, Vice Chair
Senator Pat Spearman
Senator Scott Hammond
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Susan Scholley, Policy Analyst
Eileen O'Grady, Counsel
Paula Peters, Committee Secretary

OTHERS PRESENT:

Stephanie Mullen, Executive Director, Public Utilities Commission of Nevada
Garrett Weir, General Counsel, Public Utilities Commission of Nevada
Mike Roberson, Utility Analyst, Bureau of Consumer Protection, Office of the Attorney General
Dylan Sullivan, Natural Resources Defense Council
Kyle Davis, Nevada Conservation League
Debra Gallo, Director, Regulatory Projects, Southwest Gas
Paul Moradkhan, Vegas Chamber
Barry Duncan, Nevada Taxpayers Association
Matthew Morris, Nevada Resort Association
Tony Sanchez, NV Energy
Steven Cohen

CHAIR HARRIS:

We will open the hearing on Senate Bill (S.B.) 18.

SENATE BILL 18: Revises provisions governing penalties for certain violations relating to public utilities. (BDR 58-277)

STEPHANIE MULLEN (Executive Director, Public Utilities Commission of Nevada):
I am here to present S.B. 18 which is intended to provide the Public Utilities Commission of Nevada (PUCN) with the final authority adequate to motivate adherence to the regulatory requirements that the PUCN is tasked with enforcing.

Senate Bill 18 proposes to amend the *Nevada Revised Statutes* (NRS) 703.154, NRS 703.380 and NRS 704.640 to enhance the PUCN's authority to impose administrative fines for the purpose of deterring noncompliance with statutes, regulations or PUCN report orders.

Senate Bill 18 seeks to increase administrative fines under NRS 703.154 for each violation of the law from \$1,000 per day to \$100,000. The proposed amendment ([Exhibit B](#)) increases these fines from \$1,000 to \$200,000. The bill also increases the maximum for any related series or violations from \$200,000 to \$20 million. The proposed amendment increases it from \$200,000 to \$2 million. These amended amounts match the PUCN's authority under the federal Pipeline Safety Regulations and this is a housekeeping adjustment. The PUCN has worked with the Nevada Propane Dealers Association on S.B. 18.

The requested administrative fine amount under NRS 703.380 in the bill and the proposed amendment to increase from \$1,000 to \$100,000 per day for each day of the violation, not to exceed \$10 million for any related series of violations. The requested fine amount under NRS 704.640 in the bill and the proposed amendment is to increase from \$500 to \$50,000.

The PUCN proposes to increase the administrative fine amounts for several reasons. First, the fine amounts are dated. The Legislature established the maximum fine amount under NRS 703.154 and NRS 703.380 in 1981, and for NRS 704.640 in 1979. These 40-year-old amounts are no longer sufficient to create the necessary disincentive for violating important statutes, regulations and orders that ensure the safety, reliability and affordability of the utility service.

Utility revenues have increased since 1981 as well as the potential impact of the actions or inactions of the PUCN-regulated entities. For example, the

potential subsequences of failing to implement public utilities commission-ordered fire mitigation measures. The increased property values and proximity of development to fire zones increases the risk of costly property damage, including loss of life. Notably, the Public Utilities Commission of California fined Pacific Gas and Electric \$1.9 billion in response to the Paradise Wildfire. That is 190 times larger than the maximum fining authority being requested in S.B. 18.

The nature of the PUCN's utilities regulations have evolved over past 40 years to now include the implementation and oversight of numerous programs of activities designed to achieve State policy objectives.

The PUCN is increasingly being tasked to enforce a transition to innovative approaches that differ from how things have been done for a long time. Changes are often met with resistance, and the regulator responsible for enforcing the change needs to be equipped with adequate authority to ensure compliance.

In addition, there is a proven track record of increased fining authority resulting in a decrease in the amount of the seriousness of violations. In 2019, Nevada experienced its lowest gas excavation damage rate in reported history. Nevada has seen a steady decline in the number of gas damages since the 2015 Legislative Session when the PUCN's fining authority increased.

Since 2008, the PUCN has collected and deposited over \$3.2 million in fines to the State's General Fund. The PUCN has collected over \$1.1 million since the last fine. Unlike public utility commissions in many other states, the PUCN receives no financial benefit from imposing administrative fines.

The fines are deposited to the General Fund and do not affect the agency's budget. The PUCN's only interest in imposing fines is maintaining compliance with its governing laws, orders and regulations.

The PUCN has authority to put regulated entities out of business by revoking or suspending certificates and licenses. Senate Bill 18 provides for a less severe but still serious financial penalty. The PUCN has a long history of measured application of its fining authority. When maximum penalties increase for violations relating to pipeline safety, the PUCN does not abuse that enhanced authority. Nearly every penalty has been stipulated by the penalized party.

Anyone who has been assessed a fine is entitled to a hearing and due process which involves consideration of the factors outlined in statute. If the PUCN fails to consider specific facts of the case, a decision can be overturned through the judicial review process. Utilities are further protected against excessive penalties by the PUCN with our overarching statutory duty to balance the interest of customers and shareholders of public utilities.

We understand concerns have been raised by some of the companies subject to the proposed enhanced fining authority. The PUCN plans to work with them on revised language, providing further protection against disproportionate penalties. The purpose of this bill is to empower the PUCN to impose fines that are concerning to those companies. The maximum fine amount should not be something that companies are comfortable paying nor should the fining framework be so prescriptive it allows for companies to engage in cost-benefit analysis for decisions to comply with the law.

We hope that we can agree on meaningful changes to ensure that the punishments fit the crime. The PUCN requests your support of S.B. 18. It will provide an important tool to ensure the safety, reliability and affordability of utility service and ensure the effective implementation of public policies adopted by the Nevada Legislature.

CHAIR HARRIS:

How often was the maximum fine sought by the PUCN last year?

MS. MULLEN:

Since the legislation was changed in 2015 the PUCN has never reached the \$2 million maximum fining authority under the federal Safety Pipeline Regulations. A fine of approximately \$500,000 was levied last year. The maximum fine was approximately \$300,000 around 2016 before being increased to \$500,000.

CHAIR HARRIS:

Do you have the same information for these fines that we are seeking to increase today?

MS. MULLEN:

Yes. Unfortunately the way we collect the fines that we have levied since 2008 is docket specific and not by fining authority. It is not often that the

\$100,000 maximum is reached. I will provide detailed information for you at a later date.

SENATOR BROOKS:

I understand the justification of the fines you are asking for. Why have you not reached the maximum daily fine? Is it because the daily fine was too low, there was no problem or a settlement was reached?

GARRETT WEIR (General Counsel, Public Utilities Commission of Nevada):

I think we have not reached the maximum amount due to a combination of factors.

There are restrictions that the PUCN follows which are sufficient as a deterrent with pipeline safety. The fining authority in NRS 703.380 is what we are attempting to increase in S.B. 18. We face compaction issues, and the PUCN struggles with determining appropriate fines. If the maximum fine is \$100,000, we want an appropriate fine that fits the offense. We do not want to send a message that it is an egregious violation when it is not.

We hope to have a larger fine range to access an adequate penalty when something is bad but not the worst possible type of violation. We might see more fines that could be in the existing \$100,000 range. If that is an appropriate amount you would know it would be relative to the fining range. However, if there is an egregious violation resulting in loss of life or a terrible outcome, we want the ability to access a higher penalty. That is why we are requesting an increase in the fine range.

SENATOR BROOKS:

I understand increasing the entire fine penalty grade, a spectrum which creates more incentive for good behavior at every level. Can you explain how you can reach the maximum? Can the single occurrence of one type of violation reach the maximum now, or does it involve one or more violations where over time in aggregate the daily fines reach the maximum?

MR. WEIR:

The PUCN is restricted by the maximum daily fine and the number of days for a related offense. The offense can be something systematic, such as a failure to take actions that the PUCN requires. When an offense is detected, the PUCN

will review prior years. Fines deemed applicable will be applied to the years with offenses, and you will have the ability to reach the maximum.

SENATOR PICKARD:

You stated the limitation for the fines were set 40 years ago, but then you mentioned that they were updated in 2015. Are we looking at a change over 40 years and not over 5 years?

MS. MULLEN:

The change was over 40 years ago. I was referring to the 2015 Session when we updated NRS 704.595 to revise the fees for our federal Pipeline Safety Regulations statutes.

MR. WEIR:

The revisions in NRS 704.595 provide the exact fining authority that we are now seeking for NRS 703.154. The PUCN has not been invoking its fining authority under S.B. 18, section 1 because we have authority under NRS 704.595. Revising this section of S.B. 18 is a housekeeping measure.

MIKE ROBERSON (Utility Analyst, Bureau of Consumer Protection, Office of the Attorney General):

The Bureau of Consumer Protection (BCP) represents over 1.1 million residential multifamily and small business ratepayers and dockets before the PUCN. We support and endorse S.B. 18. It is imperative that the information presented to the PUCN is complete, accurate and timely. Deception has no place in our public hearings. Clear and accurate information contributes to a thorough and adequate analysis. It ensures proceedings are conducted with the integrity and transparency that Nevadans rightfully expect and deserve. The BCP requests your support in ensuring integrity and the best possible outcomes in our public utility hearings.

DYLAN SULLIVAN (Natural Resources Defense Council):

The Natural Resources Defense Council (NRDC) is a nonprofit environmental organization and has about 25,000 members and online activists in Nevada. The NRDC supports S.B. 18 for two main reasons, first, we frequently intervene or otherwise participate in dockets at the PUCN. We review most of these dockets and react to those filed by public utility companies.

The NRDC spends tens of thousands of dollars to hire experts to help us understand what utility companies are proposing and what can be done with the law and policy changes that can improve it. Accurate information is key to the proper functioning of the regulatory process. If utilities intentionally misrepresent costs or misstate what they are doing or what they plan to do, we cannot properly respond. This bill will ensure that the utility companies have an incentive to provide accurate information to the PUCN.

Second, to a large extent Nevada is addressing climate change through our utility sector. Electric utilities are subject to the Renewable Portfolio Standard. We have energy efficiency and energy storage targets. We will have more in the future. These policies will be implemented through PUCN rules and orders. We will not be successful at reducing pollution if violating these rules and orders is another cost of doing business for utilities.

To ensure effective compliance, the potential cost of a violation means the chance of being caught multiplies by the potential fine to be greater than the potential benefit that the utility gets by not complying. This well-crafted practical legislation will give Legislators the tools they need and ensure that the regulatory process has good information.

KYLE DAVIS (Nevada Conservation League):
The Nevada Conservation League supports S.B. 18.

DEBRA GALLO (Director, Regulatory Projects, Southwest Gas):
Southwest Gas is opposed to S.B. 18 in its current structure and appreciate the proposed amendment Exhibit B by the PUCN and the modifications to the original draft that were included in that amendment. The PUCN has been open to working with us. We look forward to working with the PUCN on additional language to address the concerns with the proportionality of the administrative fines proposed in the bill.

PAUL MORADKHAN (Vegas Chamber):
The Vegas Chamber is opposed to S.B. 18 as originally drafted because of the significant change in the fine structure that has been proposed. Our concern is the precedent it would set. We recognize the issues being addressed by the PUCN and believe it will find a resolution to revise the fine structure.

BARRY DUNCAN (Nevada Taxpayers Association):

The Nevada Taxpayers Association (NTA) is opposed to language in S.B. 18. The NTA will continue to work on the amendment that meets the needs of the PUCN as well as the regulated entities.

MATTHEW MORRIS (Nevada Resort Association):

The Nevada Resort Association is opposed to S.B. 18. We thank the PUCN and Stephanie Mullen and Garrett Weir for their willingness to work with us. We will continue to work with the PUCN to clarify the broad language that appears on S.B. 18 with regards to the terms “inaccurate or misleading information.”

TONY SANCHEZ (NV Energy):

NV Energy supports the concept behind S.B. 18 to update and modernize administrative fines that can be imposed by the PUCN. As Nevada’s largest regulating utility, we fully understand the importance of the PUCN’s enforcement responsibility.

NV Energy believes that the amount of the proposed fine increases need to act as a strong deterrent but should not be considered punitive. At NV Energy, we have been fortunate not to have often faced the prospect of a fine from the PUCN. The potential impact of fines and negative effect on our reputation is a significant deterrent to prohibit misconduct.

The fee structure in NRS 703.154 has not been updated since 1993. The fee structure in NRS 703.380 has not been updated since 1981.

We agree they need to be updated. A fair approach would be to use the average inflation rate over the years in the calculation, and rounding for ease and application to revise the fine amounts to 2021 values. For example, using the average inflation rate of 2 to 3 percent, we recalculated the fine amounts; a \$1,000 fine would be revised to \$5,000, a \$100,000 fine would be revised to \$500,000 and a \$200,000 fine would be revised to the mid-\$700,000 range.

This approach will meet the objective of structured fines that are fair and in line with inflation. We have discussed this proposed legislation with the PUCN and hope to reach a consensus that meets the objectives.

CHAIR HARRIS:

Can you clarify the status of the amendment that you proposed?

MR. WEIR:

The proposed amendment meets the requirements of the PUCN. The PUCN will consider suggestions. We will continue working with interested parties to ensure that there is proper proportionality of penalties imposed. We will consider the impact of the violation, and willfulness, when selecting a punishment appropriate for the crime.

CHAIR HARRIS:

We will close the hearing on S.B. 18 and open the hearing on S.B. 59.

SENATE BILL 59: Revises provisions concerning the judicial review of decisions of the Public Utilities Commission of Nevada. (BDR 58-331)

MR. WEIR:

Senate Bill 59 is a proposal that will address the judicial review of a decision by the PUCN. This bill is not proposing to change the existing state of law in Nevada regarding judicial review of PUCN decisions. It is intended to clarify what has been viewed as ambiguous language in appeals that we have experienced in cases in recent years.

The PUCN is trying to avoid unnecessary litigation that uses State and other private resources. We hope to provide clarity and guidance regarding the types of cases and proceedings that are eligible for judicial review, as well the briefing schedule which is applicable to judicial review appeal of the decision.

There are two clarifications that we are proposing with this bill. First, we will clarify that judicial review of the final decision is limited to contested cases and not proceedings. The change to contested case in place of the more broad term proceeding conforms to the existing law in NRS 233B.130. This statute includes the judicial review provisions which are applicable to nearly every other administrative agency in the State.

The other type of proceeding where judicial review will be appropriate, other than a contested case, would be a rulemaking proceeding. There is a mechanism that exists pursuant to NRS 233B for persons to challenge the validity of the regulation adopted by PUCN, and that is NRS 233B.110. Challengers can seek declaratory judgment from a court on that issue.

Second, we are seeking clarification regarding the expedited briefing schedule for both these types of bills. The decision to limit PUCN appeals of its decisions of judicial review, which is applicable to all other state agencies, to contested cases is to expedite the process.

There are risks of impact and harm to customers from prolonged protracted litigation where decisions of the PUCN remain unresolved for a period of time, specifically, if a case lingers on appeal before the PUCN's decision is reversed.

For example: If a decision the PUCN makes to disallow the recovery costs by a utility is reversed, that decision would result in the utility being able to recover those unjustified costs. The utility would be entitled to seek the recovery of the time value of that money had it not left during the pendency of the appeal.

The quicker these cases are resolved, the less risk there is of grave impact beyond reversing the Commission's decision. A number of provisions within NRS 703.373 that govern the PUCN's appeals of PUCN decisions. Briefing timelines are shortened, and the time for reports in the number of days are shorter than they are for review in NRS 233B.

We have explicit language such as appeals of PUCN decisions taking precedence over all other civil matters in the court. It is clear that the Legislature was pursuing a policy objective of expediting this review.

One of those policy considerations we think the Legislature made was to truncate the briefing schedule for these proceedings. There is due process for a petitioner seeking a judiciary review and any other parties who want to support or challenge the PUCN's decision. The petitioner would file an opening brief and then all the parties who are respondents in the case who want to defend the PUCN's decision would file an answering plea.

At that point, the current language states the action is an issue. We think the intention was that the briefing schedule was completed and the parties should be ready for a hearing within 20 days. After there has been the opportunity for both parties to file briefs, a hearing will gather further information.

This ensures the due process that anyone challenging a PUCN decision is provided. It offers fewer briefings before the court than is contemplated for review of other agency decisions.

This is a policy consideration that we think the Legislature previously decided. The completeness or the thoroughness of the written record for the court versus the potential impacts on ratepayers of prolonged proceedings provides an appropriate balance. We want to provide clarity regarding the policy decision we think was already made by the Nevada Legislature.

CHAIR HARRIS:

Before I open up discussion on this bill and the proposed amendment ([Exhibit C](#)), I want to make sure that all the members have the amendment as provided by Ms. Mullen and Mr. Weir of the PUCN.

SENATOR PICKARD:

Senate Bill 59, section 1, subsection 7 of the proposed amendment replaces "brief" with "memorandum." I do not object to the change in language, although memorandum is broader. What happens if a judge requests additional briefings? This statute would presumably preclude that. How does this language not preclude that? Should we add language "to the effect of unless otherwise requested by the judicial officer"?

MR. WEIR:

The language would preclude a general further responsive pleading being filed. A request for a briefing on a discrete issue would not be challenged. The intent would be to expedite this process.

My proposal would be that the judge issues a preliminary order to the concerned parties requiring them to prepare discussion questions prior to the hearing. This additional pleading would extend the timeline. We would need to change the language if we wanted to contemplate discrete briefing. The concern is that this preliminary order would slow down the hearing and not meet our goal to expedite the process.

SENATOR PICKARD:

I am not in favor of hindering the ability of a court judicial office to not obtain the briefing he needs if he is trying to build a written record. I recommend the wording change as discussed.

MR. MORRIS:

The Nevada Resort Association is opposed to S.B. 59. We have had conversations about our concerns with the PUCN and what we see as a

separation of powers issue. We have concerns replacing the term “proceeding” with “contested case” as defined in NRS 233B. As a result of a proceeding being improperly served notice, a customer or interested party will not have the opportunity to participate in agency proceedings. That individual or party may be deprived of adequate due process and the ability to seek recourse through the judiciary. Senate Bill 59 could be interpreted as restricting ability to seek judicial relief, and that is the essence of our concern and opposition. We will continue to work with the PUCN on potential language.

STEVEN COHEN:

I am neutral on S.B. 59. I submitted a proposed amendment recently which might not be available online. I stand ready, willing and able to work with the Committee and PUCN to address my concerns.

MR. WEIR:

There was a comment regarding a scenario where a party does not intervene in a contested case. He is concerned about the ability to seek judicial review if a party does not participate when there was inadequate notice.

This is not a scenario that would be affected by the proposal of S.B. 59. If a party fails to intervene, there can be discussion about whether there had been adequate notice or not. You have to have been an actual party to contest the case. The issue is not the nature of the case but if it is a contested case. The issue then becomes whether notice was adequate, and there is a separate process for adjudicating that issue.

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Growth and Infrastructure
February 17, 2021
Page 13

CHAIR HARRIS:

We will close the hearing on S.B. 59. I trust Mr. Weir and Ms. Mullen will continue to work with the parties who are affected by these bills and stay in contact with the Senate Committee on Growth and Infrastructure as those discussions develop. There being no further business, we are adjourned at 4:23 p.m.

RESPECTFULLY SUBMITTED:

Paula Peters,
Committee Secretary

APPROVED BY:

Senator Dallas Harris, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 18	B	1	Stephanie Mullen / Public Utilities Commission of Nevada	Proposed Amendment
S.B. 59	C	1	Garrett Weir / Public Utilities Commission of Nevada	Proposed Amendment