

SENATE BILL NO. 125—COMMITTEE ON COMMERCE AND LABOR  
(ON BEHALF OF THE PUBLIC UTILITIES COMMISSION)

FEBRUARY 13, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to utilities and providers of new electric resources. (BDR 58-488)

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

~

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

AN ACT relating to utilities; authorizing certain natural gas utilities to use deferred accounting for certain purposes; revising provisions governing the notice that must be provided for an application to obtain a permit for a utility facility; revising certain procedural requirements concerning applications to purchase energy, capacity or ancillary services from a provider of new electric resources; revising various provisions relating to transactions between eligible customers and providers of new electric resources; and providing other matters properly relating thereto.

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

- 1     **Section 1.** NRS 703.330 is hereby amended to read as follows:  
2     703.330 1. A complete record must be kept of all hearings  
3 before the Commission. All testimony at such hearings must be  
4 taken down by the stenographer appointed by the Commission ~~or~~ or,  
5 under the direction of any competent person appointed by the  
6 Commission, must be reported by sound recording equipment in the  
7 manner authorized for reporting testimony in district courts. The  
8 testimony reported by a stenographer must be transcribed, and the  
9 transcript filed with the record in the matter. The Commission may



\* S B 1 2 5 R 1 \*

1 by regulation provide for the transcription or safekeeping of sound  
2 recordings. ~~{Cost}~~ *The costs* of recording and transcribing testimony  
3 at any hearing, except those hearings ordered pursuant to NRS  
4 703.310, must be paid by the applicant. If a complaint is made  
5 pursuant to NRS 703.310 by a customer or by a political subdivision  
6 of the State or municipal organization, the complainant is not liable  
7 for any costs. Otherwise, if there are several applicants or parties to  
8 any hearing, the Commission may apportion the costs among them  
9 in its discretion.

10 2. If a petition is served upon the Commission as provided in  
11 NRS 703.373 for the bringing of an action against the Commission,  
12 before the action is reached for trial, the Commission shall file a  
13 certified copy of all proceedings and testimony taken with the clerk  
14 of the court in which the action is pending.

15 3. A copy of the proceedings and testimony must be furnished  
16 to any party, on payment of a reasonable amount ~~{}~~ to be fixed by  
17 the Commission, and the amount must be the same for all parties.

18 4. The provisions of this section do not prohibit the  
19 Commission from:

20 (a) Restricting access to the records and transcripts of a hearing  
21 pursuant to paragraph (a) of subsection 3 of NRS 703.196.

22 (b) Protecting the confidentiality of information pursuant to  
23 NRS 704B.310 or 704B.320 ~~{}~~ *or section 7 of this act.*

24 **Sec. 2.** NRS 704.185 is hereby amended to read as follows:

25 704.185 1. A public utility which purchases natural gas for  
26 resale may record upon its books and records *in deferred accounts*  
27 all cost increases or decreases in the natural gas purchased for resale  
28 . ~~{in deferred accounts.}~~ Any public utility which ~~{utilizes}~~ *uses*  
29 deferred accounting to reflect changes in costs of natural gas  
30 purchased for resale shall include in its annual report to the  
31 Commission a statement showing the allocated rate of return for  
32 each of its operating departments in Nevada which uses deferred  
33 accounting.

34 2. If the rate of return for any department using deferred  
35 accounting *pursuant to subsection 1* is greater than the rate of  
36 return allowed by the Commission in the last rate proceeding, the  
37 Commission shall order the utility which recovered any costs of  
38 natural gas purchased for resale through rates during the reported  
39 period to transfer to the next energy adjustment period that portion  
40 of such recovered amounts which exceeds the authorized rate of  
41 return.

42 3. *A public utility which purchases natural gas for resale may*  
43 *request approval from the Commission to record upon its books*  
44 *and records in deferred accounts any other cost or revenue which*  
45 *the Commission deems appropriate for deferred accounting and*



1 *which is not otherwise subject to the provisions of subsections 1*  
2 *and 2. If the Commission approves such a request, the*  
3 *Commission shall determine the appropriate requirements for*  
4 *reporting and recovery that the public utility must follow with*  
5 *regard to each such deferred account.*

6 **Sec. 3.** NRS 704.870 is hereby amended to read as follows:  
7 704.870 1. Except as otherwise provided in subsection 2, a  
8 person who wishes to obtain a permit for a utility facility must file  
9 with the Commission an application, in such form as the  
10 Commission prescribes, containing:

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

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

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

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

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

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

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

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

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

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

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

42 3. A copy of each application and amended application filed  
43 with the Commission must be filed with the Administrator of the  
44 Division of Environmental Protection of the State Department of  
45 Conservation and Natural Resources.



1 4. Each application and amended application filed with the  
2 Commission must be accompanied by:

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

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

12 *5. Not later than 5 business days after the Commission*  
13 *receives an application or amended application pursuant to this*  
14 *section, the Commission shall issue a notice concerning the*  
15 *application or amended application. Any person who wishes to*  
16 *become a party to a permit proceeding pursuant to NRS 704.885*  
17 *must file with the Commission the appropriate document required*  
18 *by NRS 704.885 within the time frame set forth in the notice*  
19 *issued by the Commission pursuant to this subsection.*

20 **Sec. 4.** NRS 704.885 is hereby amended to read as follows:

21 704.885 1. The parties to a permit proceeding include:

22 (a) The applicant.

23 (b) The Division of Environmental Protection of the State  
24 Department of Conservation and Natural Resources.

25 (c) Each local government entitled to receive service of a copy  
26 of the application pursuant to subsection 4 of NRS 704.870, if it has  
27 filed with the Commission a notice of intervention as a party, within  
28 ~~[30 days after the date it was served with a copy of the application.]~~  
29 *the time frame established by the Commission pursuant to*  
30 *subsection 5 of NRS 704.870.*

31 (d) Any natural person residing in a local government entitled to  
32 receive service of a copy of the application pursuant to subsection 4  
33 of NRS 704.870, if such a person has petitioned the Commission for  
34 leave to intervene as a party within ~~[30 days after the date of the~~  
35 ~~published notice]~~ *the time frame established by the Commission*  
36 *pursuant to subsection 5 of NRS 704.870* and if the petition has  
37 been granted by the Commission for good cause shown.

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



1 *frame established by the Commission pursuant to subsection 5 of*  
2 *NRS 704.870.*

3 2. Any person may make a limited appearance in the  
4 proceeding by filing a statement of position within ~~{30 days after the~~  
5 ~~date of the published notice.}~~ *the time frame established by the*  
6 *Commission pursuant to subsection 5 of NRS 704.870.* A  
7 statement filed by a person making a limited appearance becomes  
8 part of the record. No person making a limited appearance has the  
9 right to present oral testimony or cross-examine witnesses.

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

17 **Sec. 5.** Chapter 704B of NRS is hereby amended by adding  
18 thereto the provisions set forth as sections 6 and 7 of this act.

19 **Sec. 6.** *“Consumer’s Advocate” means the Consumer’s*  
20 *Advocate of the Bureau of Consumer Protection in the Office of*  
21 *the Attorney General.*

22 **Sec. 7. 1.** *An eligible customer that is purchasing energy,*  
23 *capacity or ancillary services from a provider of new electric*  
24 *resources may purchase energy, capacity or ancillary services*  
25 *from an alternative provider without obtaining the approval of the*  
26 *Commission if the terms and conditions of the transaction with the*  
27 *alternative provider, other than the price of the energy, capacity or*  
28 *ancillary services, conform to the terms and conditions of the*  
29 *transaction that was originally approved by the Commission with*  
30 *respect to the eligible customer.*

31 **2.** *If any terms and conditions of the transaction with the*  
32 *alternative provider, other than the price of the energy, capacity or*  
33 *ancillary services, do not conform to the terms and conditions of*  
34 *the transaction that was originally approved by the Commission*  
35 *with respect to the eligible customer, the eligible customer must*  
36 *obtain approval from the Commission before those*  
37 *nonconforming terms and conditions are enforceable.*

38 **3.** *If the eligible customer files a request with the Commission*  
39 *for approval of any nonconforming terms and conditions, the*  
40 *Commission shall review and make a determination concerning*  
41 *the request on an expedited basis.*

42 **4.** *Notwithstanding any specific statute to the contrary,*  
43 *information concerning any terms and conditions of the*  
44 *transaction with the alternative provider that the Commission*  
45 *determines are commercially sensitive:*



1 (a) *Must not be disclosed by the Commission except to the*  
2 *regulatory operations staff of the Commission, the Consumer's*  
3 *Advocate and his staff and the affected electric utility for the*  
4 *purposes of carrying out the provisions of this section; and*

5 (b) *Shall be deemed to be confidential for all other purposes,*  
6 *and the Commission shall take such actions as are necessary to*  
7 *protect the confidentiality of such information.*

8 **Sec. 8.** NRS 704B.010 is hereby amended to read as follows:  
9 704B.010 As used in this chapter, unless the context otherwise  
10 requires, the words and terms defined in NRS 704B.020 to  
11 704B.140, inclusive, *and section 6 of this act* have the meanings  
12 ascribed to them in those sections.

13 **Sec. 9.** NRS 704B.300 is hereby amended to read as follows:

14 704B.300 1. Except as otherwise provided in this section, a  
15 provider of new electric resources may sell energy, capacity or  
16 ancillary services to one or more eligible customers if ~~the~~:

17 (a) *The* eligible customers have been approved to purchase  
18 energy, capacity and ancillary services from the provider pursuant to  
19 the provisions of NRS 704B.310 and 704B.320 ~~if~~; *or*

20 (b) *The transaction complies with the provisions of section 7 of*  
21 *this act.*

22 2. A provider of new electric resources shall not sell energy,  
23 capacity or ancillary services to an eligible customer ~~if~~:

24 ~~(a) Before April 1, 2002, if the eligible customer's load is in the~~  
25 ~~service territory of an electric utility that primarily serves less~~  
26 ~~densely populated counties;~~

27 ~~(b) Before June 1, 2002, if the eligible customer's load is in the~~  
28 ~~service territory of an electric utility that primarily serves densely~~  
29 ~~populated counties; or~~

30 ~~(c) If~~ *if* the transaction violates the provisions of this chapter.

31 3. A provider of new electric resources that sells energy,  
32 capacity or ancillary services to an eligible customer pursuant to the  
33 provisions of this chapter:

34 (a) Does not become and shall not be deemed to be a public  
35 utility solely because of that transaction; and

36 (b) Does not become and shall not be deemed to be subject to  
37 the jurisdiction of the Commission except as otherwise provided in  
38 this chapter or by specific statute.

39 4. If a provider of new electric resources is not a public utility  
40 in this state and is not otherwise authorized by the provisions of a  
41 specific statute to sell energy, capacity or ancillary services at retail  
42 in this state, the provider shall not sell energy, capacity or ancillary  
43 services at retail in this state to a person or entity that is not an  
44 eligible customer.



1       **Sec. 10.** NRS 704B.310 is hereby amended to read as follows:

2       704B.310 1. An eligible customer that is purchasing *bundled*  
3 electric service *for all or any part of its load* from an electric utility  
4 shall not purchase energy, capacity or ancillary services from a  
5 provider of new electric resources ~~{and an eligible customer that is~~  
6 ~~purchasing energy, capacity or ancillary services from a provider of~~  
7 ~~new electric resources shall not purchase energy, capacity or~~  
8 ~~ancillary services from another provider}~~ unless:

9       (a) The eligible customer files an application with the  
10 Commission not later than 180 days before the date on which the  
11 eligible customer intends to begin purchasing energy, capacity or  
12 ancillary services from the provider ~~{}~~, *except that the*  
13 *Commission may allow the eligible customer to file the application*  
14 *within any shorter period that the Commission deems appropriate;*  
15 and

16       (b) The Commission approves the application by a written order  
17 issued in accordance with the provisions of this section and NRS  
18 704B.320.

19 ~~{The date on which the eligible customer intends to begin~~  
20 ~~purchasing energy, capacity or ancillary services from the provider~~  
21 ~~must not be sooner than the date on which the provider is authorized~~  
22 ~~by NRS 704B.300 to begin selling energy, capacity or ancillary~~  
23 ~~services to the eligible customer.}~~

24       2. Except as otherwise provided in subsection 3, each  
25 application filed pursuant to this section must include:

26       (a) Information demonstrating that the person filing the  
27 application is an eligible customer;

28       (b) Information demonstrating that the proposed provider will  
29 provide energy, capacity or ancillary services from a new electric  
30 resource;

31       (c) Information concerning the terms and conditions of the  
32 proposed transaction that is necessary for the Commission to  
33 evaluate the impact of the proposed transaction on customers and  
34 the public interest, including, without limitation, information  
35 concerning the duration of the proposed transaction and the amount  
36 of energy, capacity or ancillary services to be purchased from the  
37 provider; and

38       (d) Any other information required pursuant to the regulations  
39 adopted by the Commission.

40       3. Except as otherwise provided in NRS 704B.320, the  
41 Commission shall not require the eligible customer or provider to  
42 disclose:

43       (a) The price that is being paid by the eligible customer to  
44 purchase energy, capacity or ancillary services from the provider; or





- 1 (b) Any other terms or conditions of the proposed transaction  
2 that the Commission determines are commercially sensitive.
- 3 4. The Commission shall provide public notice of the  
4 application of the eligible customer and an opportunity for a hearing  
5 on the application in a manner that is consistent with the provisions  
6 of NRS 703.320 and the regulations adopted by the Commission.
- 7 5. The Commission shall approve the application of the eligible  
8 customer unless the Commission finds that the proposed transaction:  
9 (a) Will be contrary to the public interest; or  
10 (b) Does not comply with the provisions of NRS 704B.320, if  
11 those provisions apply to the proposed transaction.
- 12 6. In determining whether the proposed transaction will be  
13 contrary to the public interest, the Commission shall consider,  
14 without limitation:  
15 (a) Whether the electric utility that has been providing electric  
16 service to the eligible customer will be burdened by increased costs  
17 as a result of the proposed transaction or whether any remaining  
18 customer of the electric utility will pay increased costs for electric  
19 service as a result of the proposed transaction;  
20 (b) Whether the proposed transaction will impair system  
21 reliability or the ability of the electric utility to provide electric  
22 service to its remaining customers; and  
23 (c) Whether the proposed transaction will add energy, capacity  
24 or ancillary services to the supply in this state.
- 25 7. If the Commission approves the application of the eligible  
26 customer:  
27 (a) The eligible customer shall not begin purchasing energy,  
28 capacity or ancillary services from the provider pursuant to the  
29 proposed transaction sooner than 180 days after the date on which  
30 the application was filed ~~§~~, *unless the Commission allows the*  
31 *eligible customer to begin purchasing energy, capacity or ancillary*  
32 *services from the provider at an earlier date;* and  
33 (b) The Commission shall order such terms, conditions and  
34 payments as the Commission deems necessary and appropriate to  
35 ensure that the proposed transaction will not be contrary to the  
36 public interest. Such terms, conditions and payments:  
37 (1) Must be fair and nondiscriminatory as between the  
38 eligible customer and the remaining customers of the electric utility;  
39 and  
40 (2) Must include, without limitation, payment by the eligible  
41 customer to the electric utility of the eligible customer's load-share  
42 portion of any unrecovered balance in the deferred accounts of the  
43 electric utility.





1 8. If the Commission does not enter a final order on the  
2 application of the eligible customer within ~~90~~ 150 days after the  
3 date on which the application was filed with the Commission:

4 (a) The application shall be deemed to be approved by the  
5 Commission; and

6 (b) The eligible customer ~~shall not~~ may begin purchasing  
7 energy, capacity or ancillary services from the provider pursuant to  
8 the proposed transaction . ~~sooner than 180 days after the date on  
9 which the application was filed.~~

10 **Sec. 11.** NRS 704B.320 is hereby amended to read as follows:

11 704B.320 1. For eligible customers whose loads are in the  
12 service territory of an electric utility that primarily serves densely  
13 populated counties, the aggregate amount of energy that all such  
14 eligible customers purchase from providers of new electric  
15 resources before July 1, 2003, must not exceed 50 percent of the  
16 difference between the existing supply of energy generated in this  
17 state that is available to the electric utility and the existing demand  
18 for energy in this state that is consumed by the customers of the  
19 electric utility, as determined by the Commission.

20 2. An eligible customer that is a nongovernmental commercial  
21 or industrial end-use customer whose load is in the service territory  
22 of an electric utility that primarily serves densely populated counties  
23 shall not purchase energy, capacity or ancillary services from a  
24 provider of new electric resources unless, as part of the proposed  
25 transaction, the eligible customer agrees to:

26 (a) Contract with the provider to purchase:

27 (1) An additional amount of energy which is equal to 10  
28 percent of the total amount of energy that the eligible customer is  
29 purchasing for its own use under the proposed transaction and which  
30 is purchased at the same price, terms and conditions as the energy  
31 purchased by the eligible customer for its own use; and

32 (2) The capacity and ancillary services associated with the  
33 additional amount of energy at the same price, terms and conditions  
34 as the capacity and ancillary services purchased by the eligible  
35 customer for its own use; and

36 (b) Offers to assign the rights to the contract to the electric  
37 utility for use by the remaining customers of the electric utility.

38 3. If an eligible customer is subject to the provisions of  
39 subsection 2, the eligible customer shall include with its application  
40 filed pursuant to NRS 704B.310 all information concerning the  
41 contract offered to the electric utility that is necessary for  
42 the Commission to determine whether it is in the best interest of the  
43 remaining customers of the electric utility for the electric utility to  
44 accept the rights to the contract. Such information must include,  
45 without limitation, the amount of the energy and capacity to be



1 purchased under the contract, the price of the energy, capacity and  
2 ancillary services and the duration of the contract.

3 4. Notwithstanding any specific statute to the contrary,  
4 information concerning the price of the energy, capacity and  
5 ancillary services and any other terms or conditions of the contract  
6 that the Commission determines are commercially sensitive:

7 (a) Must not be disclosed by the Commission except to the  
8 regulatory operations staff of the Commission, the Consumer's  
9 Advocate and his staff and the electric utility for the purposes of  
10 carrying out the provisions of this section; and

11 (b) Shall be deemed to be confidential for all other purposes,  
12 and the Commission shall take such actions as are necessary to  
13 protect the confidentiality of such information.

14 5. If the Commission determines that the contract:

15 (a) Is not in the best interest of the remaining customers of the  
16 electric utility, the electric utility shall not accept the rights to  
17 the contract, and the eligible customer is entitled to all rights to the  
18 contract.

19 (b) Is in the best interest of the remaining customers of the  
20 electric utility, the electric utility shall accept the rights to  
21 the contract and the eligible customer shall assign all rights to the  
22 contract to the electric utility. A contract that is assigned to the  
23 electric utility pursuant to this paragraph shall be deemed to be an  
24 approved part of the resource plan of the electric utility and a  
25 prudent investment, and the electric utility may recover all costs for  
26 the energy, capacity and ancillary services acquired pursuant to the  
27 contract. To the extent practicable, the Commission shall take  
28 actions to ensure that the electric utility uses the energy, capacity  
29 and ancillary services acquired pursuant to each such contract only  
30 for the benefit of the remaining customers of the electric utility that  
31 are not eligible customers, with a preference for the remaining  
32 customers of the electric utility that are residential customers with  
33 small loads.

34 6. The provisions of this section do not exempt the electric  
35 utility, in whole or in part, from the requirements imposed on the  
36 electric utility pursuant to NRS 704.7801 to 704.7828, inclusive, to  
37 comply with its portfolio standard for renewable energy. The  
38 Commission shall not take any actions pursuant to this section that  
39 conflict with or diminish those requirements.

40 ~~[7. As used in this section, "Consumer's Advocate" means the~~  
41 ~~Consumer's Advocate of the Bureau of Consumer Protection in the~~  
42 ~~Office of the Attorney General.]~~



1     **Sec. 12.** This act becomes effective upon passage and  
2 approval.

Ⓢ

