

ASSEMBLY BILL NO. 388—ASSEMBLYMAN BOBZIEN

MARCH 18, 2013

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to renewable energy. (BDR 58-517)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. 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 renewable energy; revising provisions governing certain energy-related tax incentives; revising provisions governing portfolio energy systems; revising provisions governing jurisdiction of the courts of this State with respect to certain claims or actions relating to certain renewable energy projects; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law provides for the partial abatement of certain taxes for certain
- 2 renewable energy facilities. (NRS 701A.300-701A.390) **Section 3** of this bill
- 3 removes the requirement that an application for a partial abatement of certain taxes
- 4 for certain geothermal facilities be approved by the board of county commissioners
- 5 before the application can be approved by the Director of the Office of Energy.
- 6 Under existing law, a provider of electric service is entitled to one portfolio
- 7 energy credit for each kilowatt-hour of electricity that the provider generates,
- 8 acquires or saves from a portfolio energy system or efficiency measure for the
- 9 purpose of satisfying the renewable portfolio standard of the provider. (NRS
- 10 704.78215) **Section 4** of this bill revises provisions governing the calculation of the
- 11 portfolio energy credits attributable to certain portfolio energy systems.
- 12 **Section 5** of this bill clarifies that a court of this State has jurisdiction over a
- 13 claim or action relating to a renewable energy project located upon certain Indian
- 14 tribal land under certain circumstances.



* A B 3 8 8 R 2 *

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

1 **Section 1.** NRS 701A.340 is hereby amended to read as
2 follows:

3 701A.340 1. “Renewable energy” means:

- 4 (a) Biomass;
- 5 (b) Fuel cells;
- 6 (c) *Geothermal energy*;
- 7 (d) Solar energy;
- 8 ~~(d)~~ (e) Waterpower; or
- 9 ~~(e)~~ (f) Wind.

10 2. The term does not include coal, natural gas, oil, propane or
11 any other fossil fuel ~~+, geothermal energy+~~ or nuclear energy.

12 **Sec. 2.** NRS 701A.360 is hereby amended to read as follows:

13 701A.360 1. A person who intends to locate a facility for the
14 generation of process heat from solar renewable energy, a wholesale
15 facility for the generation of electricity from renewable energy ~~+, a~~
16 ~~facility for the generation of electricity from geothermal resources+~~
17 or a facility for the transmission of electricity produced from
18 renewable energy ~~for geothermal resources+~~ in this State may apply
19 to the Director for a partial abatement of the local sales and use
20 taxes, the taxes imposed pursuant to chapter 361 of NRS, or both
21 local sales and use taxes and taxes imposed pursuant to chapter 361
22 of NRS.

23 2. A facility that is owned, operated, leased or otherwise
24 controlled by a governmental entity is not eligible for an abatement
25 pursuant to NRS 701A.300 to 701A.390, inclusive.

26 3. As soon as practicable after the Director receives an
27 application for a partial abatement, the Director shall forward a copy
28 of the application to:

- 29 (a) The Chief of the Budget Division of the Department of
30 Administration;
- 31 (b) The Department of Taxation;
- 32 (c) The board of county commissioners;
- 33 (d) The county assessor;
- 34 (e) The county treasurer; and
- 35 (f) The Office of Economic Development.

36 4. With the copy of the application forwarded to the county
37 treasurer, the Director shall include a notice that the local
38 jurisdiction may request a presentation regarding the facility. A
39 request for a presentation must be made within 30 days after receipt
40 of the application.



1 5. The Director shall hold a public hearing on the application.
2 The hearing must not be held earlier than 30 days after all persons
3 listed in subsection 3 have received a copy of the application.

4 **Sec. 3.** NRS 701A.365 is hereby amended to read as follows:

5 701A.365 1. ~~{Except as otherwise provided in subsection 2,~~
6 ~~the} *The* Director, in consultation with the Office of Economic
7 Development, shall approve an application for a partial abatement
8 pursuant to NRS 701A.300 to 701A.390, inclusive, if the Director,
9 in consultation with the Office of Economic Development, makes
10 the following determinations:~~

11 (a) The applicant has executed an agreement with the Director
12 which must:

13 (1) State that the facility will, after the date on which a
14 certificate of eligibility for the abatement is issued pursuant to NRS
15 701A.370, continue in operation in this State for a period specified
16 by the Director, which must be at least 10 years, and will continue to
17 meet the eligibility requirements for the abatement; and

18 (2) Bind the successors in interest in the facility for the
19 specified period.

20 (b) The facility is registered pursuant to the laws of this State or
21 the applicant commits to obtain a valid business license and all other
22 permits required by the county, city or town in which the facility
23 operates.

24 (c) No funding is or will be provided by any governmental
25 entity in this State for the acquisition, design or construction of the
26 facility or for the acquisition of any land therefor, except any private
27 activity bonds as defined in 26 U.S.C. § 141.

28 (d) If the facility will be located in a county whose population is
29 100,000 or more or a city whose population is 60,000 or more, the
30 facility meets the following requirements:

31 (1) There will be 75 or more full-time employees working on
32 the construction of the facility during the second quarter of
33 construction, including, unless waived by the Director for good
34 cause, at least 30 percent who are residents of Nevada;

35 (2) Establishing the facility will require the facility to make a
36 capital investment of at least \$10,000,000 in this State;

37 (3) The average hourly wage that will be paid by the facility
38 to its employees in this State is at least 110 percent of the average
39 statewide hourly wage, excluding management and administrative
40 employees, as established by the Employment Security Division of
41 the Department of Employment, Training and Rehabilitation on
42 July 1 of each fiscal year; and

43 (4) The average hourly wage of the employees working on
44 the construction of the facility will be at least 150 percent of the
45 average statewide hourly wage, excluding management and



1 administrative employees, as established by the Employment
2 Security Division of the Department of Employment, Training and
3 Rehabilitation on July 1 of each fiscal year and:

4 (I) The employees working on the construction of the
5 facility must be provided a health insurance plan that includes an
6 option for health insurance coverage for dependents of the
7 employees; and

8 (II) The cost of the benefits provided to the employees
9 working on the construction of the facility will meet the minimum
10 requirements for benefits established by the Director by regulation
11 pursuant to NRS 701A.390.

12 (e) If the facility will be located in a county whose population is
13 less than 100,000 or a city whose population is less than 60,000, the
14 facility meets the following requirements:

15 (1) There will be 50 or more full-time employees working on
16 the construction of the facility during the second quarter of
17 construction, including, unless waived by the Director for good
18 cause, at least 30 percent who are residents of Nevada;

19 (2) Establishing the facility will require the facility to make a
20 capital investment of at least \$3,000,000 in this State;

21 (3) The average hourly wage that will be paid by the facility
22 to its employees in this State is at least 110 percent of the average
23 statewide hourly wage, excluding management and administrative
24 employees, as established by the Employment Security Division of
25 the Department of Employment, Training and Rehabilitation on
26 July 1 of each fiscal year; and

27 (4) The average hourly wage of the employees working on
28 the construction of the facility will be at least 150 percent of the
29 average statewide hourly wage, excluding management and
30 administrative employees, as established by the Employment
31 Security Division of the Department of Employment, Training and
32 Rehabilitation on July 1 of each fiscal year and:

33 (I) The employees working on the construction of the
34 facility must be provided a health insurance plan that includes an
35 option for health insurance coverage for dependents of the
36 employees; and

37 (II) The cost of the benefits provided to the employees
38 working on the construction of the facility will meet the minimum
39 requirements for benefits established by the Director by regulation
40 pursuant to NRS 701A.390.

41 (f) The financial benefits that will result to this State from the
42 employment by the facility of the residents of this State and from
43 capital investments by the facility in this State will exceed the loss
44 of tax revenue that will result from the abatement.



1 (g) The facility is consistent with the State Plan for Economic
2 Development developed by the Executive Director of the Office of
3 Economic Development pursuant to subsection 2 of NRS 231.053.

4 ~~2. [The Director shall not approve an application for a partial
5 abatement of the taxes imposed pursuant to chapter 361 of NRS
6 submitted pursuant to NRS 701A.360 by a facility for the generation
7 of electricity from geothermal resources unless the application is
8 approved pursuant to this subsection. The board of county
9 commissioners of a county must approve or deny the application not
10 later than 30 days after the board receives a copy of the application.
11 The board of county commissioners must not condition the approval
12 of the application on a requirement that the facility for the
13 generation of electricity from geothermal resources agree to
14 purchase, lease or otherwise acquire in its own name or on behalf of
15 the county any infrastructure, equipment, facilities or other property
16 in the county that is not directly related to or otherwise necessary for
17 the construction and operation of the facility. If the board of county
18 commissioners does not approve or deny the application within 30
19 days after the board receives the application, the application shall be
20 deemed denied.~~

21 ~~—3—~~ Notwithstanding the provisions of subsection 1, the
22 Director, in consultation with the Office of Economic Development,
23 may, if the Director, in consultation with the Office, determines that
24 such action is necessary:

25 (a) Approve an application for a partial abatement for a facility
26 that does not meet the requirements set forth in paragraph (d) or (e)
27 of subsection 1; or

28 (b) Add additional requirements that a facility must meet to
29 qualify for a partial abatement.

30 ~~[4.]~~ 3. The Director shall cooperate with the Office of
31 Economic Development in carrying out the provisions of this
32 section.

33 ~~[5.]~~ 4. The Director shall submit to the Office of Economic
34 Development an annual report, at such a time and containing such
35 information as the Office may require, regarding the partial
36 abatements granted pursuant to this section.

37 **Sec. 4.** NRS 704.78215 is hereby amended to read as follows:

38 704.78215 1. Except as otherwise provided in this section or
39 by specific statute, a provider is entitled to one portfolio energy
40 credit for each kilowatt-hour of electricity that the provider
41 generates, acquires or saves from a portfolio energy system or
42 efficiency measure.

43 2. The Commission may adopt regulations that give a provider
44 more than one portfolio energy credit for each kilowatt-hour of



1 electricity saved by the provider during its peak load period from
2 energy efficiency measures.

3 *3. Except as otherwise provided in this subsection, for*
4 *portfolio energy systems placed into operation on or after*
5 *January 1, 2016, the amount of electricity generated or acquired*
6 *from a portfolio energy system does not include the amount of any*
7 *electricity used by the portfolio energy system for its basic*
8 *operations that reduce the amount of renewable energy delivered*
9 *to the transmission grid for distribution and sale to customers of*
10 *the provider. The provisions of this subsection do not apply to a*
11 *portfolio energy system placed into operation on or after*
12 *January 1, 2016, if a provider entered into a contract for the*
13 *purchase of electricity generated by the portfolio energy system on*
14 *or before December 31, 2012. For the purposes of this subsection,*
15 *the amount of any electricity used by a portfolio energy system for*
16 *its basic operations does not include the electricity used by a*
17 *portfolio energy system that generates electricity from geothermal*
18 *energy for the extraction and transportation of geothermal brine.*

19 **Sec. 5.** Chapter 41 of NRS is hereby amended by adding
20 thereto a new section to read as follows:

21 *1. A court of this State has jurisdiction pursuant to*
22 *subsection 1 of NRS 14.065 with respect to any claim or action*
23 *relating to a renewable energy project located upon Indian tribal*
24 *land if:*

25 *(a) The Indian tribe occupying the tribal land has a*
26 *reservation of not less than 60,000 acres;*

27 *(b) The Indian tribal land is located in a county whose*
28 *population is 700,000 or more; and*

29 *(c) The governing body of the Indian tribe has expressly*
30 *waived its sovereign immunity with respect to such claim or action*
31 *in a written agreement, contract or other instrument which*
32 *expressly states that the terms of the agreement, contract or other*
33 *instrument must be governed by the applicable laws of this State.*

34 *2. As used in this section, "renewable energy project" means*
35 *a project for the construction or installation of a facility for the*
36 *generation of renewable energy, as defined in NRS 701.070.*



