

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 revises the authority of a board of county commissioners relating to the approval of
- 4 an application for a partial abatement of certain taxes submitted by a person who
- 5 operates a facility for the generation of electricity from renewable 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.



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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*  
7 *generation of process heat from solar renewable energy or a*  
8 *wholesale facility for the generation of electricity from ~~geothermal~~*  
9 *resources renewable energy* unless the application is approved *or*  
10 *deemed approved* pursuant to this subsection. The board of county  
11 commissioners of a county must *provide notice to the Director that*  
12 *the board intends to consider an application and, if such notice is*  
13 *given, must* approve or deny the application not later than 30 days  
14 after the board receives a copy of the application. The board of  
15 county commissioners ~~must~~ :

16 (a) *Shall, in considering an application pursuant to this*  
17 *subsection, make a recommendation to the Director regarding the*  
18 *application;*

19 (b) *May, in considering an application pursuant to this*  
20 *subsection, deny an application only if the board of county*  
21 *commissioners determines, based on relevant information, that:*

22 (1) *The projected cost of the services that the local*  
23 *government is required to provide to the facility will exceed the*  
24 *amount of tax revenue that the local government is projected to*  
25 *receive as a result of the abatement; or*

26 (2) *The projected financial benefits that will result to the*  
27 *county from the employment by the facility of the residents of this*  
28 *State and from capital investments by the facility in the county will*  
29 *not exceed the projected loss of tax revenue that will result from*  
30 *the abatement;*

31 (c) *Must* not condition the approval of the application on a  
32 requirement that the facility ~~for the generation of electricity from~~  
33 ~~geothermal resources~~ agree to purchase, lease or otherwise acquire  
34 in its own name or on behalf of the county any infrastructure,  
35 equipment, facilities or other property in the county that is not  
36 directly related to or otherwise necessary for the construction and  
37 operation of the facility ~~it~~; and

38 (d) *May, without regard to whether the board has provided*  
39 *notice to the Director of its intent to consider the application,*  
40 *make a recommendation to the Director regarding the application.*

41 ➔ If the board of county commissioners does not approve or deny  
42 the application within 30 days after the board receives the  
43 application, the application shall be deemed ~~denied~~ *approved*.

44 3. Notwithstanding the provisions of subsection 1, the Director,  
45 in consultation with the Office of Economic Development, may, if



1 the Director, in consultation with the Office, determines that such  
2 action is necessary:

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

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

8 4. The Director shall cooperate with the Office of Economic  
9 Development in carrying out the provisions of this section.

10 5. The Director shall submit to the Office of Economic  
11 Development an annual report, at such a time and containing such  
12 information as the Office may require, regarding the partial  
13 abatements granted pursuant to this section.

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

15 704.78215 1. Except as otherwise provided in this section or  
16 by specific statute, a provider is entitled to one portfolio energy  
17 credit for each kilowatt-hour of electricity that the provider  
18 generates, acquires or saves from a portfolio energy system or  
19 efficiency measure.

20 2. The Commission may adopt regulations that give a provider  
21 more than one portfolio energy credit for each kilowatt-hour of  
22 electricity saved by the provider during its peak load period from  
23 energy efficiency measures.

24 *3. Except as otherwise provided in this subsection, for*  
25 *portfolio energy systems placed into operation on or after*  
26 *January 1, 2016, the amount of electricity generated or acquired*  
27 *from a portfolio energy system does not include the amount of any*  
28 *electricity used by the portfolio energy system for its basic*  
29 *operations that reduce the amount of renewable energy delivered*  
30 *to the transmission grid for distribution and sale to customers of*  
31 *the provider. The provisions of this subsection do not apply to a*  
32 *portfolio energy system placed into operation on or after*  
33 *January 1, 2016, if a provider entered into a contract for the*  
34 *purchase of electricity generated by the portfolio energy system on*  
35 *or before December 31, 2012. For the purposes of this subsection,*  
36 *the amount of any electricity used by a portfolio energy system for*  
37 *its basic operations:*

38 *(a) Except as otherwise provided in paragraph (b), includes*  
39 *electricity used for the heating, lighting, air-conditioning and*  
40 *equipment of a building located on the site of the portfolio energy*  
41 *system, and for operating any other equipment located on such*  
42 *site.*

43 *(b) Does not include the electricity used by a portfolio energy*  
44 *system that generates electricity from geothermal energy for the*



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1 *extraction and transportation of geothermal brine or used to pump*  
2 *or compress geothermal brine.*

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

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

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

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

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

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



