

SENATE BILL NO. 259—SENATOR PORTER

FEBRUARY 25, 1999

Referred to Committee on Taxation

SUMMARY—Revises provisions governing taxation of certain businesses. (BDR 32-1099)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: 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 taxation; revising the requirements for certain businesses to qualify for a partial abatement of certain taxes imposed on the personal property of the business or for an exemption from the payment of certain taxes imposed for the privilege of conducting business in this state; increasing the membership of the commission on tourism; revising the provisions concerning legislative appropriations to the commission on economic development for awarding grants to develop certain programs for occupational education; providing an exemption from the imposition of the business tax for certain businesses that create or produce motion pictures; 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 361.0687 is hereby amended to read as follows:
2 361.0687 1. A person who intends to locate or expand a business in
3 this state may apply to the commission on economic development for a
4 partial abatement from the taxes imposed by this chapter on the personal
5 property of the new or expanded business.
6 2. The commission on economic development may approve an
7 application for a partial abatement if the commission makes the following
8 determinations:
9 (a) The goals of the business are consistent with the goals of the
10 commission and the community concerning industrial development and
11 diversification.
12 (b) The abatement is a significant factor in the decision of the applicant
13 to locate or expand a business in this state or the appropriate affected local
14 government determines that the abatement will be beneficial to the
15 economic development of the community.

1 (c) The average hourly wage which will be paid by the new or expanded
2 business to its employees in this state is at least 125 percent of the average
3 statewide industrial hourly wage as established by the employment security
4 division of the department of employment, training and rehabilitation on
5 July 1 of each fiscal year.

6 (d) The business will provide a health insurance plan for all employees
7 that includes an option for health insurance coverage for dependents of the
8 employees.

9 (e) The cost to the business for the benefits the business provides to its
10 employees in this state will meet the minimum requirements for benefits
11 established by the commission pursuant to subsection ~~18.1~~ 9.

12 (f) A capital investment for personal property will be made to locate or
13 expand the business in Nevada which is at least:

14 (1) ~~18.1~~ *Except as otherwise provided in subparagraph (2), if* the
15 personal property directly related to the establishment of the business in
16 this state is primarily located in a county whose population:

17 (I) Is 100,000 or more, \$50,000,000.

18 (II) Is less than 100,000, \$20,000,000.

19 (2) If the personal property directly related to the *establishment of*
20 *the business in this state is primarily located in a city or town whose*
21 *population is less than 25,000, and the city or town is located in a county*
22 *whose population is 100,000 or more, \$20,000,000.*

23 (3) *Except as otherwise provided in subparagraph (4), if the*
24 *personal property directly related to the* expansion of the business is
25 primarily located in a county whose population:

26 (I) Is 100,000 or more, \$10,000,000.

27 (II) Is less than 100,000, \$4,000,000.

28 (4) *If the personal property directly related to the expansion of the*
29 *business is primarily located in a city or town whose population is less*
30 *than 25,000, and that city or town is located in a county whose*
31 *population is 100,000 or more, \$4,000,000.*

32 (g) The business will create at least the following number of new, full-
33 time and permanent jobs in the State of Nevada by the fourth quarter that it
34 is in operation:

35 (1) ~~18.1~~ *Except as otherwise provided in subparagraph (2), if* a new
36 business will be primarily located in a county whose population:

37 (I) Is 100,000 or more, 100 jobs.

38 (II) Is less than 100,000, 35 jobs.

39 (2) If *a new business will be primarily located in a city or town*
40 *whose population is less than 25,000, and that city or town is located in a*
41 *county whose population is 100,000 or more, 35 jobs.*

42 (3) *Except as otherwise provided in subparagraph (4), if* an
43 expanded business will be primarily located in a county whose population:

1 (I) Is 100,000 or more, and the business has at least 100 employees
2 in this state, 20 jobs. An expanded business primarily located in such a
3 county that has less than 100 employees is not eligible for a partial
4 abatement pursuant to this section.

5 (II) Is less than 100,000, and the business has at least 35 employees
6 in this state, 10 jobs. An expanded business primarily located in such a
7 county that has less than 35 employees is not eligible for a partial
8 abatement pursuant to this section.

9 *(4) If an expanded business that has at least 35 employees in this*
10 *state will be primarily located in a city or town whose population is less*
11 *than 25,000, and that city or town is located in a county whose*
12 *population is 100,000 or more, 10 jobs. An expanded business primarily*
13 *located in such a city or town that has less than 35 employees is not*
14 *eligible for a partial abatement pursuant to this section.*

15 (h) For the expansion of a business primarily located ~~in~~ :

16 *(1) Except as otherwise provided in subparagraph (3), in* a county
17 *whose population ~~is~~*

18 ~~—(1) Is~~ *is* 100,000 or more, the book value of the assets of the business
19 in this state is at least \$20,000,000.

20 (2) ~~Is~~ *In a county whose population is* less than 100,000, the book
21 value of the assets of the business in this state is at least \$5,000,000.

22 *(3) In a city or town whose population is less than 25,000, and that*
23 *city or town is located in a county whose population is 100,000 or more,*
24 *the book value of the assets of the business in this state is at least*
25 *\$5,000,000.*

26 (i) The business is registered pursuant to the laws of this state or the
27 applicant commits to obtain a ~~valid~~ business license and all other permits
28 required by the county, city or town in which the business operates.

29 (j) The proposed abatement has been approved by the governing body of
30 the appropriate affected local government as determined pursuant to the
31 regulations adopted pursuant to subsection ~~8.1~~ 9. In determining whether to
32 approve a proposed abatement, the governing body shall consider whether
33 the taxes to be paid by the business are sufficient to pay for any investment
34 required to be made by the local government for services associated with
35 the relocation or expansion of the business, including, without limitation,
36 costs related to the construction and maintenance of roads, sewer and water
37 services, fire and police protection and the construction and maintenance of
38 schools.

39 (k) The applicant has executed an agreement with the commission which
40 states that the business will continue in operation in Nevada for 10 or more
41 years after the date on which a certificate of eligibility for the abatement is
42 issued pursuant to subsection 5 and will continue to meet the eligibility

1 requirements ~~contained~~ *set forth* in this subsection. The agreement must
2 bind the successors in interest of the business for the required period.

3 3. An applicant shall, upon the request of the executive director of the
4 commission on economic development, furnish him with copies of all
5 records necessary to verify that the applicant meets the requirements of
6 subsection 2.

7 4. The percentage of the abatement must be 50 percent of the taxes
8 payable each year.

9 5. If an application for a partial abatement is approved, the commission
10 on economic development shall immediately forward a certificate of
11 eligibility for the abatement to:

12 (a) The department; and

13 (b) The county assessor of each county in which personal property
14 directly related to the establishment or expansion of the business will be
15 located.

16 6. Upon receipt by the department of the certificate of eligibility, the
17 taxpayer is eligible for an abatement from the tax imposed by this chapter
18 for 10 years:

19 (a) For the expansion of a business, on all personal property of the
20 business that is located in Nevada and directly related to the expansion of
21 the business in this state.

22 (b) For a new business, on all personal property of the business that is
23 located in Nevada and directly related to the establishment of the business
24 in this state.

25 7. If a business for which an abatement has been approved is not
26 maintained in this state in accordance with the agreement required ~~in~~
27 *pursuant to* subsection 2, for at least 10 years after the commission on
28 economic development approved the abatement, the person who applied for
29 the abatement shall repay to ~~the~~ *each* county treasurer ~~for treasurers~~ who
30 would have received the taxes but for the abatement the total amount of all
31 taxes that were abated pursuant to this section. The person who applied for
32 the abatement shall pay interest on the amount due at the rate of 10 percent
33 per annum for each month, or portion thereof, from the last day of the
34 month following the period for which the payment would have been made
35 if the abatement had not been granted until the date of the actual payment
36 of the tax.

37 8. A county treasurer:

38 (a) Shall deposit any money that he receives pursuant to subsection 7 in
39 one or more of the funds established by a local government of the county
40 pursuant to NRS 354.611, 354.6113 or 354.6115; and

41 (b) May use the money deposited pursuant to paragraph (a) only for the
42 purposes authorized by NRS 354.611, 354.6113 and 354.6115.

1 9. The commission on economic development shall adopt regulations
2 necessary to carry out the provisions of this section. The regulations must
3 include, but not be limited to:

4 (a) A method for determining the appropriate affected local government
5 to approve a proposed abatement and the procedure for obtaining ~~such~~
6 *that* approval; and

7 (b) Minimum requirements for benefits that a business applying for a
8 partial abatement must offer to its employees to be approved for the partial
9 abatement.

10 10. The department shall adopt regulations concerning how county
11 assessors shall administer partial abatements approved pursuant to this
12 section.

13 11. An applicant for an abatement who is aggrieved by a final decision
14 of the commission on economic development may petition for judicial
15 review in the manner provided in chapter 233B of NRS.

16 **Sec. 2.** NRS 364A.020 is hereby amended to read as follows:

17 364A.020 1. "Business" includes:

18 (a) A corporation, partnership, proprietorship, business association and
19 any other similar organization that conducts an activity for profit;

20 (b) The activities of a natural person which are deemed to be a business
21 pursuant to NRS 364A.120; and

22 (c) A trade show or convention held in this state in which a business
23 described in paragraph (a) or (b) takes part, or which a person who
24 conducts such a business attends, for a purpose related to the conduct of the
25 business.

26 2. The term includes an independent contractor.

27 3. The term does not include:

28 (a) A nonprofit religious, charitable, fraternal or other organization that
29 qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c); ~~for~~

30 (b) A governmental entity ~~or~~; *or*

31 *(c) A business that creates or produces motion pictures if the business*
32 *is conducted in this state for less than 60 days. As used in this paragraph,*
33 *"motion pictures" has the meaning ascribed to it in NRS 231.020.*

34 **Sec. 3.** NRS 364A.130 is hereby amended to read as follows:

35 364A.130 1. Except as otherwise provided in subsection 6, ~~and~~
36 ~~NRS 364A.153,~~ a person shall not conduct a business in this state unless
37 he has a business license issued by the department.

38 2. The application for a business license must:

39 (a) Be made upon a form prescribed by the department;

40 (b) Set forth the name under which the applicant transacts or intends to
41 transact business and the location of his place or places of business;

42 (c) Declare the estimated number of employees for the previous
43 calendar

quarter;

(d) Be accompanied by a fee of \$25; and

(e) Include any other information that the department deems necessary.

3. The application must be signed by:

(a) The owner, if the business is owned by a natural person;

(b) A member or partner, if the business is owned by an association or partnership; or

(c) An officer or some other person specifically authorized to sign the application, if the business is owned by a corporation.

4. If the application is signed pursuant to paragraph (c) of subsection 3, written evidence of the signer's authority must be attached to the application.

5. For the purposes of this chapter, a person shall be deemed to conduct a business in this state if a business for which the person is responsible:

(a) Is incorporated pursuant to chapter 78 or 78A of NRS;

(b) Has an office or other base of operations in this state; or

(c) Pays wages or other remuneration to a natural person who performs in this state any of the duties for which he is paid.

6. A person who takes part in a trade show or convention held in this state for a purpose related to the conduct of a business is not required to obtain a business license specifically for that event.

Sec. 4. NRS 364A.170 is hereby amended to read as follows:

364A.170 1. A proposed business that qualifies pursuant to the provisions of this section is entitled to an exemption of:

(a) Eighty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the first 4 quarters of its operation;

(b) Sixty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the second 4 quarters of its operation;

(c) Forty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the third 4 quarters of its operation; and

(d) Twenty percent of the amount of tax otherwise due pursuant to NRS 364A.140 during the fourth 4 quarters of its operation.

2. A proposed business is entitled to the exemption pursuant to subsection 1 if:

(a) ~~Has~~ *Except as otherwise provided in paragraph (b), in* a county whose population is 35,000 or more:

(1) The business will have 75 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation;

(2) Establishing the business will require the business to make a capital investment of \$1,000,000 in Nevada; and

(3) The exemption is approved by the commission on economic development pursuant to subsection

3.

(b) In a county whose population is less than 35,000 ~~or~~ *or in a city or town located in a county specified in paragraph (a) whose population is less than 25,000:*

(1) The business will have 25 or more full-time employees on the payroll of the business by the fourth quarter that it is in operation;

(2) Establishing the business will require the business to make a capital investment of \$250,000 in Nevada; and

(3) The exemption is approved by the commission on economic development pursuant to subsection 3.

3. A proposed business must apply to the commission on economic development to obtain the exemption authorized pursuant to this section. The commission shall certify a business's eligibility for the exemption pursuant to this section if:

(a) The proposed business commits to the requirements of subparagraphs (1) and (2) of paragraph (a) or (b) of subsection 2, whichever is applicable; and

(b) The proposed business is consistent with the commission's plan for economic diversification and development.

Upon certification, the commission shall immediately forward the certificate of eligibility for the exemption to the Nevada tax commission.

4. Upon receipt of ~~such a~~ *the* certificate, the Nevada tax commission shall include the exemption in the calculation of the tax paid by the business. A business for which an exemption is approved that does not:

(a) Have the required number of full-time employees on the payroll of the business by the fourth quarter that it is in operation; or

(b) Make the required capital investment in Nevada in the course of establishing the business,

~~is required to~~ *shall* repay to the department the amount of the exemption that was allowed pursuant to this section before the business's failure to comply unless the Nevada tax commission determines that the business has substantially complied with the requirements of this section. The business is also required to pay interest on the amount due at the rate most recently established pursuant to NRS 99.040 for each month, or portion thereof, from the last day of the month following the period for which the payment would have been made had the exemption not been granted until the date of payment of the tax.

5. The commission on economic development shall adopt regulations governing the determination made pursuant to subsection 3 of a proposed business's eligibility for the exemption provided in this section.

6. The Nevada tax commission:

(a) Shall adopt regulations governing the investments that qualify for the purposes of the required capital investment pursuant to subparagraph (2) of paragraph (a) or (b) of subsection 2.

(b) May adopt such other regulations as are necessary to carry out the provisions of this section.

Sec. 5. NRS 231.068 is hereby amended to read as follows:

231.068 **1.** The commission on economic development, to the extent of legislative appropriations, may grant money to a postsecondary educational institution to develop a program for occupational education which is designed to teach skills in a short ~~{time}~~ **period** to persons who are needed for employment by new or existing businesses.

2. Any money appropriated to the commission on economic development for awarding grants to develop a program specified in subsection 1 must be accounted for separately in the state general fund.

The money in the account:

(a) Does not revert to the state general fund at the end of any fiscal year; and

(b) Must be carried forward to the next fiscal year.

Sec. 6. NRS 231.170 is hereby amended to read as follows:

231.170 **1.** The commission on tourism is composed of the lieutenant governor, who is its chairman, and ~~{six}~~ **eight** members who are appointed by the governor.

2. The governor shall appoint as members of the commission persons who are informed on and have experience in travel and tourism, including the business of gaming.

3. The chief administrative officers of ~~the~~ county fair and recreation boards ~~{of counties whose population is 100,000 or more}~~ **or, if there is no county fair and recreation board in the county, the chairman of the board of county commissioners, of the three counties that paid the largest amount of the proceeds from the taxes imposed on the revenue from the rental of transient lodging to the department of taxation for deposit with the state treasurer for credit to the fund for the promotion of tourism created by NRS 231.250 for the previous fiscal year** are ex officio but nonvoting members of the commission. **A change in any member of the commission who serves pursuant to the provisions of this subsection that is required because of a change in the amount of the proceeds paid to the department of taxation by each county must be effective on January 1 of the calendar year immediately following the fiscal year in which the proceeds were paid to the department of taxation.**

4. The governor shall appoint : ~~{at least one member who is a resident of:}~~

(a) At least one member who is a resident of Clark County.

(b) At least one member who is a resident of Washoe County.

(c) ~~{A county}~~ Two members who are residents of counties whose population is ~~{35,000}~~ **50,000** or less.

(d) One member who is a resident of any county in this state.

1 **Sec. 7.** NRS 608.300 is hereby amended to read as follows:

2 608.300 As used in NRS 608.300 to 608.330, inclusive, unless the
3 context otherwise requires:

4 1. “Artist” means an actor, musician, dancer or athlete.

5 2. “Production” means:

6 (a) A stage production ~~;~~ ~~or~~

7 ~~—(b) —A) or a~~ motion picture, as that term is defined in NRS 231.020, that
8 uses artists ~~;~~ ~~or~~

9 **(b) A television production, concert, trade show, exhibition,**
10 **convention or sporting event.**

11 The term includes the technical personnel used to create and produce the
12 production.

13 3. “Producer-promoter-employer” means a natural person who, or a
14 firm, association or corporation which, supervises or finances a production
15 or attempts to organize a production. The term also includes a company
16 that, in connection with the production of a motion picture within this state:

17 (a) Is hired or established to organize or manage the payroll of the
18 production and is the employer of record of any or all of the persons
19 engaged in the production; or

20 (b) Is responsible for all of the debts and obligations incurred by a
21 motion picture company in the production.

22 **Sec. 8.** NRS 608.310 is hereby amended to read as follows:

23 608.310 1. Except as otherwise provided in subsection 4, a producer-
24 promoter-employer intending to do business in this state must obtain a
25 permit from the labor commissioner.

26 2. An application for the permit required by subsection 1 must contain
27 information concerning:

28 (a) The applicant’s name and permanent address;

29 (b) The financing for the production;

30 (c) The type of production intended by the applicant, the number of
31 artists, technical personnel and other persons required for the production
32 and where the applicant intends to exhibit the production; and

33 (d) Such other information as the labor commissioner may require by
34 regulation for the protection of persons associated with the entertainment
35 industry.

36 3. The commissioner may by regulation require a reasonable fee for
37 processing an application.

38 4. The provisions of this section do not apply to any producer-
39 promoter-employer who produces proof to the commissioner or, in a county
40 whose population is 400,000 or more, produces proof to the department or
41 agency within that county which is authorized to issue business licenses on
42 behalf of the county that he:

1 (a) Has been in the business of a producer-promoter-employer in this
2 state for the 5-year period immediately preceding the filing of the
3 application and has had no successful wage claim filed with the labor
4 commissioner during that period;

5 (b) Has sufficient tangible assets in this state which, if executed upon,
6 would equal or exceed the amount of bond required; **or**

7 (c) Holds a license to operate a nonrestricted gaming operation in this
8 state. ~~}; or~~

9 ~~—(d) If the producer-promoter-employer is engaged in the production of a~~
10 ~~motion picture, as that term is defined in NRS 231.020, within a county~~
11 ~~whose population is 400,000 or more, has contracted with a company to~~
12 ~~organize or manage the payroll of the production and the company is the~~
13 ~~employer of record of any or all of the persons engaged in the production.~~

14 ~~—5.— If a producer-promoter-employer is exempt from the provisions of~~
15 ~~this section pursuant to subsection 4, he may request a waiver confirming~~
16 ~~that exemption from:~~

17 ~~—(a) The director of the division of motion pictures of the commission on~~
18 ~~economic development; or~~

19 ~~—(b) In a county whose population is 400,000 or more, the department or~~
20 ~~agency within that county which is authorized to issue business licenses on~~
21 ~~behalf of the county.~~

22 ~~If the request is made pursuant to paragraph (b), the department or agency~~
23 ~~shall submit the request to the division of motion pictures in accordance~~
24 ~~with NRS 608.325. The labor commissioner shall, within 1 working day,~~
25 ~~approve such a request upon confirmation that the producer-promoter-~~
26 ~~employer fulfills one or more of the criteria for an exemption set forth in~~
27 ~~subsection 4. A waiver approved pursuant to this subsection is effective for~~
28 ~~a period of 5 years unless the labor commissioner determines that good~~
29 ~~cause exists to revoke the waiver. Upon the expiration of a waiver at the~~
30 ~~end of the 5-year period, the labor commissioner may extend the waiver for~~
31 ~~an additional period if the labor commissioner determines that the~~
32 ~~producer-promoter-employer has acted in good faith and has complied with~~
33 ~~the statutes and regulations of this state.]~~

34 **Sec. 9.** NRS 608.325 is hereby amended to read as follows:

35 608.325 In a county whose population is 400,000 or more, if the
36 department or agency within that county which is authorized to issue
37 business licenses on behalf of the county receives ~~};~~

38 ~~—1.— A request for a waiver pursuant to subsection 5 of NRS 608.310; or~~

39 ~~—2.— A] a~~ bond posted pursuant to NRS 608.320, the department or
40 agency shall, within 1 working day, transmit the ~~{request or}~~ bond to the
41 ~~{division of motion pictures of the}~~ commission on economic development.

1 Upon the receipt of a ~~request or~~ bond, the producer-promoter-employer to
2 whom the ~~request or~~ bond pertains shall be deemed to have complied with
3 NRS 231.128.

4 **Sec. 10.** NRS 608.330 is hereby amended to read as follows:

5 608.330 Any person who fails to comply with the provisions of NRS
6 608.300 to 608.330, inclusive:

7 1. Is guilty of a misdemeanor; and

8 2. May be prohibited by the ~~division of motion pictures of the~~
9 commission on economic development from proceeding with the
10 production until the ~~division~~ **commission** determines that he is in
11 compliance with those provisions.

12 **Sec. 11.** NRS 364A.153 is hereby repealed.

TEXT OF REPEALED SECTION

364A.153 Responsibility of certain agencies to collect tax from out-of-state businesses engaged in creating or producing motion pictures in Nevada.

1. The division of motion pictures of the commission on economic development or, in a county whose population is 400,000 or more, the department or agency within that county which is authorized to issue business licenses on behalf of the county, as agents of the department of taxation, shall collect the tax imposed by this chapter from those businesses that engage in the business of creating or producing motion pictures, as that term is defined in NRS 231.020, that are not residents or do not have a permanent place of business in this state. All taxes collected pursuant to this subsection must be immediately forwarded to the department upon receipt.

2. The tax must be calculated pursuant to NRS 364A.140 and 364A.150 upon the number of hours worked in this state, but a person who conducts a business described in subsection 1 need not obtain a business license under this chapter.