

ASSEMBLY BILL NO. 122—ASSEMBLYMAN LIVERMORE

PREFILED FEBRUARY 3, 2011

Referred to Committee on Government Affairs

SUMMARY—Authorizes the imposition of certain reasonable restrictions or requirements relating to systems for obtaining wind and solar energy. (BDR 22-592)

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

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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 energy; authorizing the imposition of certain reasonable restrictions or requirements relating to systems for obtaining wind and solar energy; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the governing body of a city or county: (1) may enact
2 zoning regulations and restrictions to promote the health, safety, morals or general
3 welfare of the community; (2) is prohibited from adopting an ordinance or taking
4 any other action which unreasonably prohibits or restricts an owner of real property
5 from using a system for obtaining solar or wind energy on his or her property; (3)
6 may impose a reasonable restriction on the use of a system for obtaining wind
7 energy which is related to the height, noise or safety of the system; and (4) is
8 required to authorize the use of a system which uses solar or wind energy to reduce
9 energy costs for a structure if the system and structure comply with all applicable
10 building codes and zoning ordinances. (NRS 278.020, 278.02077, 278.0208,
11 278.580) The governing body of a city or county unreasonably prohibits or restricts
12 the use of a system for obtaining solar or wind energy if the governing body
13 imposes restrictions that significantly decrease the efficiency or performance of the
14 solar or wind energy system unless the restriction provides for the use of a
15 comparable alternative system. (NRS 278.02077, 278.0208) **Section 1** of this bill
16 provides that, in addition to reasonable restrictions relating to height, noise or
17 safety, reasonable restrictions on the use of a system for obtaining wind energy may
18 include restrictions relating to setback, location and appearance, and **section 2** of
19 this bill authorizes the imposition of reasonable restrictions relating to the
20 appearance, height, location, noise, safety or setback of a system for obtaining solar
21 energy. Additionally, **sections 1 and 2** require a governing body to adopt an
22 ordinance that: (1) requires the owner of a residential lot to obtain a special use
23 permit or conditional use permit for a wind or solar energy system; and (2) provides
24 affected property owners with notice and an opportunity to be heard.



1 WHEREAS, Nevada has significant amounts of solar and wind
2 resources available for use in the production of clean, renewable
3 sources of energy; and

4 WHEREAS, It has been a stated goal of the Nevada Legislature to
5 encourage the availability of these solar and wind resources for use
6 by the residents of this State; and

7 WHEREAS, Local governments have traditionally been
8 authorized to enact zoning and land use regulations and restrictions
9 to promote the health, safety, morals and general welfare of their
10 communities; and

11 WHEREAS, It is the intent of the Nevada Legislature to
12 encourage local governments to balance the use of clean, renewable
13 sources of energy with the promotion of the health, safety, morals
14 and general welfare of their communities; now, therefore

15
16 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
17 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
18

19 **Section 1.** NRS 278.02077 is hereby amended to read as
20 follows:

21 278.02077 1. Except as otherwise provided in subsection 2:

22 (a) A governing body shall not adopt an ordinance, regulation or
23 plan or take any other action that prohibits or unreasonably restricts
24 the owner of real property from using a system for obtaining wind
25 energy on his or her property.

26 (b) Any covenant, restriction or condition contained in a deed,
27 contract or other legal instrument which affects the transfer or sale
28 of, or any other interest in, real property and which prohibits or
29 unreasonably restricts the owner of the property from using a system
30 for obtaining wind energy on his or her property is void and
31 unenforceable.

32 2. The provisions of subsection 1 do not prohibit a reasonable
33 restriction or requirement:

34 (a) Imposed pursuant to a determination by the Federal Aviation
35 Administration that the installation of the system for obtaining wind
36 energy would create a hazard to air navigation; ~~for~~

37 (b) Relating to the *appearance*, height, *location*, noise , ~~for~~
38 safety *or setback* of a system for obtaining wind energy ~~for~~ ; *or*

39 (c) *Prohibiting the construction of more than one system for*
40 *obtaining wind energy per acre for a residential lot.*

41 3. *Each governing body shall adopt an ordinance that:*

42 (a) *Prohibits an owner of a residential lot from installing a*
43 *system for obtaining wind energy on the residential lot unless the*



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1 *owner has obtained a special use permit or conditional use permit*
2 *for that use of the residential lot; and*

3 *(b) Provides any property owner that would be affected by the*
4 *system for obtaining wind energy with notice and an opportunity*
5 *to be heard.*

6 **4.** For the purposes of this section, “unreasonably restricts the
7 owner of the property from using a system for obtaining wind
8 energy” includes the placing of a restriction or requirement on the
9 use of a system for obtaining wind energy which significantly
10 decreases the efficiency or performance of the system and which
11 does not allow for the use of an alternative system at a substantially
12 comparable cost and with substantially comparable efficiency and
13 performance.

14 **Sec. 2.** NRS 278.0208 is hereby amended to read as follows:

15 278.0208 1. *Except as otherwise provided in subsection 2:*

16 *(a) A governing body shall not adopt an ordinance, regulation or*
17 *plan or take any other action that prohibits or unreasonably restricts*
18 *or has the effect of prohibiting or unreasonably restricting the owner*
19 *of real property from using a system for obtaining solar energy on*
20 *his or her property.*

21 ~~12.1~~ *(b) Any covenant, restriction or condition contained in a*
22 *deed, contract or other legal instrument which affects the transfer*
23 *or sale of, or any other interest in, real property and which prohibits*
24 *or unreasonably restricts or has the effect of prohibiting or*
25 *unreasonably restricting the owner of the property from using a*
26 *system for obtaining solar energy on his or her property is void and*
27 *unenforceable.*

28 **2.** *The provisions of subsection 1 do not prohibit a reasonable*
29 *restriction or requirement relating to the appearance, height,*
30 *location, noise, safety or setback of a system for obtaining solar*
31 *energy.*

32 **3.** *Each governing body shall adopt an ordinance that:*

33 *(a) Prohibits an owner of a residential lot from installing a*
34 *system for obtaining solar energy on the residential lot unless the*
35 *owner has obtained a special use permit or conditional use permit*
36 *for that use of the residential lot; and*

37 *(b) Provides any property owner that would be affected by the*
38 *system for obtaining solar energy with notice and an opportunity*
39 *to be heard.*

40 **4.** For the purposes of this section, the following shall be
41 deemed to be unreasonable restrictions:

42 *(a) The placing of a restriction or requirement on the use of a*
43 *system for obtaining solar energy which decreases the efficiency or*
44 *performance of the system by more than 10 percent of the amount*
45 *that was originally specified for the system, as determined by the*



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1 Director of the Office of Energy, and which does not allow for the
2 use of an alternative system at a substantially comparable cost and
3 with substantially comparable efficiency and performance.

4 (b) The prohibition of a system for obtaining solar energy that
5 uses components painted with black solar glazing.

6 **Sec. 3.** This act becomes effective upon passage and approval.

