

ASSEMBLY BILL NO. 444—ASSEMBLYMEN BROOKS; ANDERSON,
ATKINSON, BENITEZ-THOMPSON, DALY, FRIERSON AND
PIERCE

MARCH 21, 2011

JOINT SPONSORS: SENATORS KIHUEN AND MANENDO

Referred to Committee on Taxation

SUMMARY—Authorizes the Commission on Economic
Development to approve partial abatements of taxes
imposed on certain facilities that locate in this State.
(BDR 32-722)

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 taxation; authorizing the Commission on
Economic Development to approve under certain
conditions a partial abatement of the taxes imposed on a
training facility for high-speed railway systems that
locates in this State; providing for the administration and
enforcement of the terms of such an abatement; requiring
certain reports to the Legislature; and providing other
matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits the Legislature from enacting an exemption from
property taxes or sales and use taxes unless it makes certain findings. (Nev. Const.
Art. 10, § 6) **Section 1** of this bill sets forth the required findings for the purposes
of this bill.

Existing law authorizes the Commission on Economic Development to
approve, under certain conditions, a partial abatement of property taxes, business
taxes and local sales and use taxes for a person who intends to locate or expand a
business in this State. (NRS 360.750, 361.0687, 363B.120, 374.357, 701A.210)
Section 2 of this bill similarly authorizes the Commission to approve a partial
abatement of those taxes, other than the taxes imposed by the Local School Support
Tax Law, for a training facility for high-speed railway systems that locates in this
State.



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To assist in the enforcement of the terms of these new tax abatements, **section 3** of this bill requires the Department of Taxation to report to the Commission on Economic Development any noncompliance with the applicable eligibility requirements discovered by the Department during the course of an investigation, and **section 5** of this bill requires such a facility to agree to allow the Department to conduct audits to determine compliance. **Section 6** of this bill requires the Commission to submit biennial reports concerning the abatements to the Legislature. **Sections 8 and 9** of this bill terminate all authorization for these abatements in 10 years.

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

Section 1. The Legislature hereby finds that each exemption provided by this act from any ad valorem tax on property or excise tax on the sale, storage, use or consumption of tangible personal property sold at retail:

1. Will achieve a bona fide social or economic purpose and that the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

2. Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Sec. 2. Chapter 360 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person who intends to locate a new training facility for high-speed railway systems in this State may apply to the Commission on Economic Development pursuant to this section for a partial abatement of the local sales and use taxes imposed on the facility, the taxes imposed on the facility pursuant to chapter 361 of NRS, the tax imposed on the facility pursuant to chapter 363B of NRS, any combination of those taxes or all of those taxes.

2. The Commission on Economic Development shall approve an application for a partial abatement pursuant to this section if the Commission makes the following determinations:

(a) The facility is consistent with:

(1) The State Plan for Industrial Development and Diversification that is developed by the Commission pursuant to NRS 231.067; and

(2) Any guidelines adopted pursuant to the State Plan.

(b) The applicant has executed an agreement with the Commission which must:



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- 1 (1) *Comply with the requirements of NRS 360.755;*
- 2 (2) *Require the facility to submit to the Department*
- 3 *the reports required by paragraph (c) of subsection 1 of*
- 4 *NRS 218D.355;*
- 5 (3) *State that the facility will, after the date on which a*
- 6 *certificate of eligibility for the abatement is issued pursuant to*
- 7 *subsection 5, continue in operation in this State for a period*
- 8 *specified by the Commission, which must be at least 5 years, and*
- 9 *will continue to meet the eligibility requirements set forth in this*
- 10 *subsection; and*
- 11 (4) *Bind the successors in interest of the facility for the*
- 12 *specified period.*
- 13 (c) *The facility is registered pursuant to the laws of this State*
- 14 *or the applicant commits to obtain a valid business license and all*
- 15 *other permits required by the county, city or town in which the*
- 16 *facility will operate.*
- 17 (d) *The facility does not:*
- 18 (1) *Receive any funding from a governmental entity, other*
- 19 *than any private activity bonds as defined in 26 U.S.C. § 141; or*
- 20 (2) *Receive any real or personal property from a*
- 21 *governmental entity at no cost or at a reduced cost.*
- 22 3. *Notwithstanding the provisions of subsection 2, the*
- 23 *Commission on Economic Development:*
- 24 (a) *Shall not consider an application for a partial abatement*
- 25 *pursuant to this section unless the Commission has requested a*
- 26 *letter of acknowledgment of the request for the abatement from*
- 27 *any affected county, school district, city or town.*
- 28 (b) *May, if the Commission determines that such action is*
- 29 *necessary, add additional requirements that a facility must meet to*
- 30 *qualify for a partial abatement pursuant to this section.*
- 31 4. *If the Commission on Economic Development approves an*
- 32 *application for a partial abatement pursuant to this section of:*
- 33 (a) *The local sales and use taxes imposed on a facility, the*
- 34 *partial abatement:*
- 35 (1) *Must be for a duration of not more than 2 years; and*
- 36 (2) *Applies only to the facility for which the partial*
- 37 *abatement was approved pursuant to this section and the property*
- 38 *used in connection with that facility.*
- 39 (b) *The property taxes imposed on a facility pursuant to*
- 40 *chapter 361 of NRS, the partial abatement:*
- 41 (1) *Must:*
- 42 (I) *Be for a duration of at least 1 year but not more than*
- 43 *10 years; and*
- 44 (II) *Not exceed 50 percent of the taxes imposed on the*
- 45 *real and personal property of the facility each year; and*



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1 (2) *Applies only to the facility for which the partial*
2 *abatement was approved pursuant to this section and the property*
3 *used in connection with that facility.*

4 (c) *The tax imposed on a facility pursuant to chapter 363B of*
5 *NRS, the facility is entitled to an exemption of 50 percent of the*
6 *amount of tax otherwise due from the facility pursuant to NRS*
7 *363B.110 during the first 4 years of its operation.*

8 5. *If the Commission on Economic Development approves an*
9 *application for a partial abatement pursuant to this section, the*
10 *Commission shall immediately forward a certificate of eligibility*
11 *for the abatement to:*

12 (a) *The Department;*

13 (b) *The Nevada Tax Commission; and*

14 (c) *If the partial abatement is from the property taxes imposed*
15 *pursuant to chapter 361 of NRS, the county treasurer of the*
16 *county in which the facility will be located.*

17 6. *An applicant for a partial abatement pursuant to this*
18 *section or an existing facility whose partial abatement is in effect*
19 *shall, upon the request of the Executive Director of the*
20 *Commission on Economic Development, furnish the Executive*
21 *Director with copies of all records necessary to verify that the*
22 *applicant meets the requirements of subsection 2.*

23 7. *If a facility whose partial abatement has been approved*
24 *pursuant to this section and is in effect ceases:*

25 (a) *To meet the requirements set forth in subsection 2; or*

26 (b) *Operation before the time specified in the agreement*
27 *described in paragraph (b) of subsection 2,*

28 ↪ *the facility shall repay to the Department or, if the partial*
29 *abatement was from the property taxes imposed pursuant to*
30 *chapter 361 of NRS, to the county treasurer, the amount of the*
31 *exemption that was allowed pursuant to this section before the*
32 *failure of the facility to comply unless the Nevada Tax*
33 *Commission determines that the facility has substantially complied*
34 *with the requirements of this section. Except as otherwise provided*
35 *in NRS 360.232 and 360.320, the facility shall, in addition to the*
36 *amount of the exemption required to be paid pursuant to this*
37 *subsection, pay interest on the amount due at the rate most*
38 *recently established pursuant to NRS 99.040 for each month, or*
39 *portion thereof, from the last day of the month following the*
40 *period for which the payment would have been made had the*
41 *partial abatement not been approved until the date of payment of*
42 *the tax.*

43 8. *A county treasurer:*

44 (a) *Shall deposit any money that he or she receives pursuant to*
45 *subsection 7 in one or more of the funds established by a local*



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1 *government of the county pursuant to NRS 354.6113 or 354.6115;*
2 *and*

3 *(b) May use the money deposited pursuant to paragraph (a)*
4 *only for the purposes authorized by NRS 354.6113 and 354.6115.*

5 *9. The Commission on Economic Development may adopt*
6 *such regulations as the Commission on Economic Development*
7 *determines to be necessary to carry out the provisions of this*
8 *section.*

9 *10. The Nevada Tax Commission:*

10 *(a) Shall adopt regulations regarding any security that a*
11 *facility is required to post to qualify for a partial abatement*
12 *pursuant to this section.*

13 *(b) May adopt such other regulations as the Nevada Tax*
14 *Commission determines to be necessary to carry out the provisions*
15 *of this section.*

16 *11. An applicant for a partial abatement pursuant to this*
17 *section who is aggrieved by a final decision of the Commission on*
18 *Economic Development may petition for judicial review in the*
19 *manner provided in chapter 233B of NRS.*

20 *12. As used in this section:*

21 *(a) "Local sales and use taxes" means any taxes imposed on*
22 *the gross receipts of any retailer from the sale of tangible personal*
23 *property sold at retail, or stored, used or otherwise consumed, in*
24 *any political subdivision of this State, except the taxes imposed by*
25 *the Sales and Use Tax Act and NRS 374.110 and 374.190.*

26 *(b) "Training facility for high-speed railway systems" means a*
27 *facility for the training of persons to test any aerodynamic,*
28 *braking or other systems used in the operation of a high-speed*
29 *railway.*

30 **Sec. 3.** NRS 360.225 is hereby amended to read as follows:

31 360.225 1. During the course of an investigation undertaken
32 pursuant to NRS 360.130 of a person claiming:

33 (a) A partial abatement of property taxes pursuant to
34 NRS 361.0687;

35 (b) An exemption from taxes pursuant to NRS 363B.120;

36 (c) A deferral of the payment of taxes on the sale of capital
37 goods pursuant to NRS 372.397 or 374.402; ~~for~~

38 (d) An abatement of taxes on the gross receipts from the sale,
39 storage, use or other consumption of eligible machinery or
40 equipment pursuant to NRS 374.357 ~~to~~; **or**

41 *(e) A partial abatement of taxes pursuant to section 2 of this*
42 *act,*

43 ➤ the Department shall investigate whether the person meets the
44 eligibility requirements for the abatement, partial abatement,
45 exemption or deferral that the person is claiming.



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2. If the Department finds that the person does not meet the eligibility requirements for the abatement, exemption or deferral which the person is claiming, the Department shall report its findings to the Commission on Economic Development and take any other necessary actions.

Sec. 4. NRS 360.750 is hereby amended to read as follows:

360.750 1. A person who intends to locate or expand a business in this State may apply to the Commission on Economic Development *pursuant to this section* for a partial abatement of one or more of the taxes imposed on the new or expanded business pursuant to chapter 361, 363B or 374 of NRS.

2. The Commission on Economic Development shall approve an application for a partial abatement *pursuant to this section* if the Commission makes the following determinations:

(a) The business is consistent with:

(1) The State Plan for Industrial Development and Diversification that is developed by the Commission pursuant to NRS 231.067; and

(2) Any guidelines adopted pursuant to the State Plan.

(b) The applicant has executed an agreement with the Commission which must:

(1) Comply with the requirements of NRS 360.755;

(2) State that the business will, after the date on which a certificate of eligibility for the abatement is issued pursuant to subsection 4, continue in operation in this State for a period specified by the Commission, which must be at least 5 years, and will continue to meet the eligibility requirements set forth in this subsection; and

(3) Bind the successors in interest of the business for the specified period.

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

(d) Except as otherwise provided in NRS 361.0687, if the business is a new business in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the business meets at least two of the following requirements:

(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 at least \$1,000,000 in this State.

(3) The average hourly wage that will be paid by the new business to its employees in this State is at least 100 percent of the



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1 average statewide hourly wage 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 business will provide a health insurance plan for
5 all employees that includes an option for health insurance coverage
6 for dependents of the employees; and

7 (II) The cost to the business for the benefits the business
8 provides to its employees in this State will meet the minimum
9 requirements for benefits established by the Commission by
10 regulation pursuant to subsection 8.

11 (e) Except as otherwise provided in NRS 361.0687, if the
12 business is a new business in a county whose population is less than
13 100,000 or a city whose population is less than 60,000, the business
14 meets at least two of the following requirements:

15 (1) The business will have 15 or more full-time employees
16 on the payroll of the business by the fourth quarter that it is in
17 operation.

18 (2) Establishing the business will require the business to
19 make a capital investment of at least \$250,000 in this State.

20 (3) The average hourly wage that will be paid by the new
21 business to its employees in this State is at least 100 percent of the
22 average statewide hourly wage or the average countywide hourly
23 wage, whichever is less, as established by the Employment Security
24 Division of the Department of Employment, Training and
25 Rehabilitation on July 1 of each fiscal year and:

26 (I) The business will provide a health insurance plan for
27 all employees that includes an option for health insurance coverage
28 for dependents of the employees; and

29 (II) The cost to the business for the benefits the business
30 provides to its employees in this State will meet the minimum
31 requirements for benefits established by the Commission by
32 regulation pursuant to subsection 8.

33 (f) If the business is an existing business, the business meets at
34 least two of the following requirements:

35 (1) The business will increase the number of employees on
36 its payroll by 10 percent more than it employed in the immediately
37 preceding fiscal year or by six employees, whichever is greater.

38 (2) The business will expand by making a capital investment
39 in this State in an amount equal to at least 20 percent of the value of
40 the tangible property possessed by the business in the immediately
41 preceding fiscal year. The determination of the value of the tangible
42 property possessed by the business in the immediately preceding
43 fiscal year must be made by the:

44 (I) County assessor of the county in which the business
45 will expand, if the business is locally assessed; or



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1 (II) Department, if the business is centrally assessed.

2 (3) The average hourly wage that will be paid by the existing
3 business to its new employees in this State is at least the amount of
4 the average hourly wage required to be paid by businesses pursuant
5 to subparagraph (2) of either paragraph (a) or (b) of subsection 2 of
6 NRS 361.0687, whichever is applicable, and:

7 (I) The business will provide a health insurance plan for
8 all new employees that includes an option for health insurance
9 coverage for dependents of the employees; and

10 (II) The cost to the business for the benefits the business
11 provides to its new employees in this State will meet the minimum
12 requirements for benefits established by the Commission by
13 regulation pursuant to subsection 8.

14 (g) In lieu of meeting the requirements of paragraph (d), (e) or
15 (f), if the business furthers the development and refinement of
16 intellectual property, a patent or a copyright into a commercial
17 product, the business meets at least two of the following
18 requirements:

19 (1) The business will have 10 or more full-time employees
20 on the payroll of the business by the fourth quarter that it is in
21 operation.

22 (2) Establishing the business will require the business to
23 make a capital investment of at least \$500,000 in this State.

24 (3) The average hourly wage that will be paid by the new
25 business to its employees in this State is at least the amount of the
26 average hourly wage required to be paid by businesses pursuant to
27 subparagraph (2) of either paragraph (a) or (b) of subsection 2 of
28 NRS 361.0687, whichever is applicable, and:

29 (I) The business will provide a health insurance plan for
30 all employees that includes an option for health insurance coverage
31 for dependents of the employees; and

32 (II) The cost to the business for the benefits the business
33 provides to its employees in this State will meet with minimum
34 requirements established by the Commission by regulation pursuant
35 to subsection 8.

36 3. Notwithstanding the provisions of subsection 2, the
37 Commission on Economic Development:

38 (a) Shall not consider an application for a partial abatement
39 *pursuant to this section* unless the Commission has requested a
40 letter of acknowledgment of the request for the abatement from any
41 affected county, school district, city or town.

42 (b) May, if the Commission determines that such action is
43 necessary:



(1) Approve an application for a partial abatement *pursuant to this section* by a business that does not meet the requirements set forth in paragraph (d), (e), (f) or (g) of subsection 2;

(2) Make the requirements set forth in paragraph (d), (e), (f) or (g) of subsection 2 more stringent; or

(3) Add additional requirements that a business must meet to qualify for a partial abatement *pursuant to this section*.

4. If the Commission on Economic Development approves an application for a partial abatement *pursuant to this section*, the Commission shall immediately forward a certificate of eligibility for the abatement to:

(a) The Department;

(b) The Nevada Tax Commission; and

(c) If the partial abatement is from the property tax imposed pursuant to chapter 361 of NRS, the county treasurer.

5. An applicant for a partial abatement pursuant to this section or an existing business whose partial abatement is in effect shall, upon the request of the Executive Director of the Commission on Economic Development, furnish the Executive Director with copies of all records necessary to verify that the applicant meets the requirements of subsection 2.

6. If a business whose partial abatement has been approved pursuant to this section and is in effect ceases:

(a) To meet the requirements set forth in subsection 2; or

(b) Operation before the time specified in the agreement described in paragraph (b) of subsection 2,

the business shall repay to the Department or, if the partial abatement was from the property tax imposed pursuant to chapter 361 of NRS, to the county treasurer, the amount of the exemption that was allowed pursuant to this section before the failure of the business to comply unless the Nevada Tax Commission determines that the business has substantially complied with the requirements of this section. Except as otherwise provided in NRS 360.232 and 360.320, the business shall, in addition to the amount of the exemption required to be paid pursuant to this subsection, 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 partial abatement not been approved until the date of payment of the tax.

7. A county treasurer:

(a) Shall deposit any money that he or she receives pursuant to subsection 6 in one or more of the funds established by a local government of the county pursuant to NRS 354.6113 or 354.6115; and



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

8. The Commission on Economic Development:

(a) Shall adopt regulations relating to the minimum level of benefits that a business must provide to its employees if the business is going to use benefits paid to employees as a basis to qualify for a partial abatement ~~§~~ *pursuant to this section*; and

(b) May adopt such other regulations as the Commission on Economic Development determines to be necessary to carry out the provisions of this section and NRS 360.755.

9. The Nevada Tax Commission:

(a) Shall adopt regulations regarding:

(1) The capital investment that a new business must make to meet the requirement set forth in paragraph (d), (e) or (g) of subsection 2; and

(2) Any security that a business is required to post to qualify for a partial abatement pursuant to this section.

(b) May adopt such other regulations as the Nevada Tax Commission determines to be necessary to carry out the provisions of this section and NRS 360.755.

10. An applicant for ~~§~~ *a partial* abatement *pursuant to this section* who is aggrieved by a final decision of the Commission on Economic Development may petition for judicial review in the manner provided in chapter 233B of NRS.

Sec. 5. NRS 360.755 is hereby amended to read as follows:

360.755 1. If the Commission on Economic Development approves an application by a business for a partial abatement pursuant to NRS 360.750 ~~§~~ *or section 2 of this act*, the agreement with the Commission must provide that the business:

(a) Agrees to allow the Department to conduct audits of the business to determine whether the business is in compliance with the requirements for the partial abatement; and

(b) Consents to the disclosure of the audit reports in the manner set forth in this section.

2. If the Department conducts an audit of the business to determine whether the business is in compliance with the requirements for the partial abatement, the Department shall, upon request, provide the audit report to the Commission on Economic Development.

3. Until the business has exhausted all appeals to the Department and the Nevada Tax Commission relating to the audit, the information contained in the audit report provided to the Commission on Economic Development:

(a) Is confidential proprietary information of the business;

(b) Is not a public record; and



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(c) Must not be disclosed to any person who is not an officer or employee of the Commission on Economic Development unless the business consents to the disclosure.

4. After the business has exhausted all appeals to the Department and the Nevada Tax Commission relating to the audit:

(a) The audit report provided to the Commission on Economic Development is a public record; and

(b) Upon request by any person, the Executive Director of the Commission on Economic Development shall disclose the audit report to the person who made the request, except for any information in the audit report that is protected from disclosure pursuant to subsection 5.

5. Before the Executive Director of the Commission on Economic Development discloses the audit report to the public, the business may submit a request to the Executive Director to protect from disclosure any information in the audit report which, under generally accepted business practices, would be considered a trade secret or other confidential proprietary information of the business. After consulting with the business, the Executive Director shall determine whether to protect the information from disclosure. The decision of the Executive Director is final and is not subject to judicial review. If the Executive Director determines to protect the information from disclosure, the protected information:

(a) Is confidential proprietary information of the business;

(b) Is not a public record;

(c) Must be redacted by the Executive Director from any audit report that is disclosed to the public; and

(d) Must not be disclosed to any person who is not an officer or employee of the Commission on Economic Development unless the business consents to the disclosure.

Sec. 6. NRS 231.0685 is hereby amended to read as follows:

231.0685 The Commission on Economic Development shall, on or before January 15 of each odd-numbered year, prepare and submit to the Director of the Legislative Counsel Bureau for transmission to the Legislature a report concerning the abatements from taxation that the Commission approved pursuant to NRS 274.310, 274.320, 274.330 or 360.750 ~~§~~ *or section 2 of this act.* The report must set forth, for each abatement from taxation that the Commission approved in the 2-year period immediately preceding the submission of the report:

1. The dollar amount of the abatement;

2. The location of the business for which the abatement was approved;

3. If applicable, the number of employees that the business for which the abatement was approved employs or will employ;



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1 4. Whether the business for which the abatement was approved
2 is a new business or an existing business; and

3 5. Any other information that the Commission determines to be
4 useful.

5 **Sec. 7.** The Commission on Economic Development shall use
6 its best efforts to seek out and encourage appropriate businesses to
7 locate training facilities for high-speed railway systems in southern
8 Nevada.

9 **Sec. 8.** Notwithstanding the provisions of section 2 of this act,
10 a person is not entitled to any partial abatement of taxes pursuant to
11 that section after June 30, 2021.

12 **Sec. 9.** 1. This act becomes effective:

13 (a) Upon passage and approval for the purpose of adopting
14 regulations and performing any other preparatory administrative
15 tasks that are necessary to carry out the provisions of this act; and

16 (b) On July 1, 2011, for all other purposes.

17 2. Sections 2, 3, 5 and 6 of this act expire by limitation on
18 June 30, 2021.

