

ASSEMBLY BILL NO. 388—ASSEMBLYMAN BOBZIEN

MARCH 18, 2013

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to renewable energy systems. (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; authorizing the Director of the Office of Energy, in consultation with the Office of Economic Development, to grant to certain businesses partial abatements of certain property taxes and local sales and use taxes imposed on certain renewable energy systems; revising provisions governing net metering; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 9** of this bill authorizes a person who intends to locate a new business in this State to apply to the Director of the Office of Energy for a partial abatement of certain property taxes and local sales and use taxes imposed on certain renewable energy systems which are installed on the property of the business and which are for the purpose of supplying all or a part of the electricity requirements of the new business. **Section 9** requires the Director to hold a public hearing concerning each application. **Section 10** of this bill requires the Director to consult with the Office of Economic Development and to make certain determinations before approving any application. **Section 11** of this bill sets forth the duration and maximum amount of the partial abatements.

Existing law provides generally that a renewable energy system does not qualify as a net metering system if the system exceeds a generating capacity of 1 megawatt. (NRS 704.771) **Section 15** of this bill authorizes the Director, in consultation with the Office of Economic Development, to make a determination that a renewable energy system for which a partial abatement has been approved pursuant to **sections 2-16** of this bill is deemed to be a net metering system regardless of the generating capacity of the system. **Section 17** of this bill revises certain other provisions governing net metering to provide that excess electricity which is generated by a net metering system and fed back to the utility must be credited to the customer-generator based on the value of the electricity under the otherwise applicable rate or time-of-use rate charged by the utility rather than



22 the number of kilowatt-hours of excess electricity generated by the customer-  
23 generator.

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

1     **Section 1.** Chapter 701A of NRS is hereby amended by  
2 adding thereto the provisions set forth as sections 2 to 16, inclusive,  
3 of this act.

4     **Sec. 2.** *As used in sections 2 to 16, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3 to 8, inclusive, of this act have the meanings ascribed*  
7 *to them in those sections.*

8     **Sec. 3.** *“Biomass” means any organic matter that is available*  
9 *on a renewable basis, including, without limitation:*

- 10     1. *Agricultural crops and agricultural wastes and residues;*
- 11     2. *Wood and wood wastes and residues;*
- 12     3. *Animal wastes;*
- 13     4. *Municipal wastes; and*
- 14     5. *Aquatic plants.*

15     **Sec. 4.** *“Director” means the Director of the Office of*  
16 *Energy appointed pursuant to NRS 701.150.*

17     **Sec. 5.** *“Fuel cell” means a device or contrivance which,*  
18 *through the chemical process of combining ions of hydrogen and*  
19 *oxygen, produces electricity and water.*

20     **Sec. 6.** *“Local sales and use taxes” means any taxes imposed*  
21 *on the gross receipts of any retailer from the sale of tangible*  
22 *personal property sold at retail, or stored, used or otherwise*  
23 *consumed, in any political subdivision of this State, except the*  
24 *taxes imposed by the Sales and Use Tax Act.*

25     **Sec. 7. 1.** *“Renewable energy” means:*

- 26     (a) *Biomass;*
- 27     (b) *Fuel cells;*
- 28     (c) *Solar energy;*
- 29     (d) *Waterpower; or*
- 30     (e) *Wind.*

31     2. *The term does not include coal, natural gas, oil, propane*  
32 *or any other fossil fuel, geothermal energy or nuclear energy.*

33     **Sec. 8. 1.** *“Renewable energy system” means a system for*  
34 *the generation of electricity that:*

- 35     (a) *Uses renewable energy as its primary source of energy; and*
- 36     (b) *Has a generating capacity of at least 1 megawatt.*

37     2. *The term includes all the machinery and equipment that is*  
38 *used by the system to collect and store the renewable energy and to*  
39 *convert the renewable energy into electricity.*



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1       3. The term does not include a system that is located on  
2 residential property.

3       **Sec. 9. 1.** A person who intends to locate a new business in  
4 this State may apply to the Director for a partial abatement of the  
5 local sales and use taxes, the taxes imposed pursuant to chapter  
6 361 of NRS, or both local sales and use taxes and taxes imposed  
7 pursuant to chapter 361 of NRS for any renewable energy system  
8 which is constructed or installed on the property of the new  
9 business and which is for the purpose of supplying all or part of  
10 the electricity requirements of the new business.

11       2. As soon as practicable after the Director receives an  
12 application for a partial abatement, the Director shall forward a  
13 copy of the application to:

14       (a) The Chief of the Budget Division of the Department of  
15 Administration;

16       (b) The Department of Taxation;

17       (c) The board of county commissioners;

18       (d) The county assessor;

19       (e) The county treasurer; and

20       (f) The Office of Economic Development.

21       3. With the copy of the application forwarded to the county  
22 treasurer, the Director shall include a notice that the local  
23 jurisdiction may request a presentation regarding the renewable  
24 energy system. A request for a presentation must be made within  
25 30 days after receipt of the application.

26       4. The Director shall hold a public hearing on the  
27 application. The hearing must not be held earlier than 30 days  
28 after all persons listed in subsection 2 have received a copy of the  
29 application.

30       **Sec. 10. 1.** Except as otherwise provided in subsection 2,  
31 the Director, in consultation with the Office of Economic  
32 Development, shall approve an application for a partial abatement  
33 pursuant to sections 2 to 16, inclusive, of this act if the Director, in  
34 consultation with the Office of Economic Development, makes the  
35 following determinations:

36       (a) The applicant has executed an agreement with the Director  
37 which:

38       (1) States that the business will, after the date on which a  
39 certificate of eligibility for the partial abatement is issued pursuant  
40 to section 11 of this act, continue in operation in this State for a  
41 period specified by the Director, which must be at least 10 years,  
42 and will continue to meet the eligibility requirements for the  
43 partial abatement; and

44       (2) Binds the successors in interest in the business for the  
45 specified period.



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

5       (c) *No funding is or will be provided by any governmental*  
6 *entity in this State for the acquisition, design or construction of*  
7 *the renewable energy system or for the acquisition of any land*  
8 *therefor, except any private activity bonds as defined in 26 U.S.C.*  
9 *§ 141.*

10       (d) *The financial benefits that will result to this State from the*  
11 *employment by the business of the residents of this State and from*  
12 *capital investments by the business in this State will exceed the*  
13 *loss of tax revenue that will result from the partial abatement.*

14       (e) *The business is consistent with the State Plan for Economic*  
15 *Development developed by the Executive Director of the Office of*  
16 *Economic Development pursuant to subsection 2 of NRS 231.053.*

17       2. *If the Director, in consultation with the Office of*  
18 *Economic Development, determines that such action is necessary,*  
19 *the Director may add additional requirements that a business must*  
20 *meet to qualify for a partial abatement.*

21       3. *The Director shall cooperate with the Office of Economic*  
22 *Development in carrying out the provisions of this section.*

23       4. *The Director shall submit to the Office of Economic*  
24 *Development an annual report, at such a time and containing*  
25 *such information as the Office may require, regarding the partial*  
26 *abatements granted pursuant to this section.*

27       **Sec. 11. 1.** *If the Director approves an application for a*  
28 *partial abatement pursuant to sections 2 to 16, inclusive, of this*  
29 *act of:*

30       (a) *Property taxes imposed pursuant to chapter 361 of NRS,*  
31 *the partial abatement must:*

32       (1) *Be for a duration of the 20 fiscal years immediately*  
33 *following the date of approval of the application;*

34       (2) *Be equal to not more than 55 percent of the taxes on*  
35 *real and personal property attributable to the renewable energy*  
36 *system and payable by the business each year; and*

37       (3) *Not apply during any period in which the business is*  
38 *receiving another abatement or exemption from property taxes*  
39 *imposed pursuant to chapter 361 of NRS, other than any partial*  
40 *abatement provided pursuant to NRS 361.4722.*

41       (b) *Local sales and use taxes:*

42       (1) *The partial abatement must:*

43       (1) *Be for the 3 years beginning on the date of approval*  
44 *of the application;*



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*(II) Be equal to that portion of the combined rate of all the local sales and use taxes attributable to the construction or installation of the renewable energy system and payable by the business each year which exceeds 0.25 percent; and*

*(III) Not apply during any period in which the business is receiving another abatement or exemption from local sales and use taxes.*

*(2) The Department of Taxation shall issue to the business a document certifying the partial abatement which can be presented to retailers at the time of sale. The document must clearly state that the purchaser is only required to pay sales and use taxes imposed in this State at the rate of 2.25 percent.*

*2. Upon approving an application for a partial abatement pursuant to sections 2 to 16, inclusive, of this act, the Director shall immediately forward a certificate of eligibility for the partial abatement to:*

- (a) The Department of Taxation;*
- (b) The board of county commissioners;*
- (c) The county assessor;*
- (d) The county treasurer; and*
- (e) The Office of Economic Development.*

*Sec. 12. 1. The Director may, with the assistance of the Chief of the Budget Division of the Department of Administration and the Department of Taxation, publish a fiscal note that indicates an estimate of the fiscal impact of the partial abatement on the State and on each affected local government. If the Director publishes a fiscal note that estimates the fiscal impact of the partial abatement on local government, the Director shall forward a copy of the fiscal note to each affected local government and to the Office of Economic Development.*

*2. As soon as practicable after receiving a copy of a certificate of eligibility pursuant to section 11 of this act, the Department of Taxation shall forward a copy of the certificate to each affected local government.*

*Sec. 13. 1. A partial abatement approved by the Director pursuant to sections 2 to 16, inclusive, of this act terminates upon any determination by the Director that the business has ceased to meet any eligibility requirements for the partial abatement.*

*2. The Director shall provide notice and a reasonable opportunity to cure any noncompliance issues before making a determination that the business has ceased to meet those requirements.*

*3. The Director shall immediately provide notice of each determination of termination to:*



1 (a) The Department of Taxation, which shall immediately  
2 notify each affected local government of the determination;

3 (b) The board of county commissioners;

4 (c) The county assessor;

5 (d) The county treasurer; and

6 (e) The Office of Economic Development.

7 4. A business whose partial abatement is terminated pursuant  
8 to this section shall repay to:

9 (a) The county treasurer the amount of the exemption from  
10 property taxes imposed pursuant to chapter 361 of NRS; and

11 (b) The Department of Taxation the amount of the exemption  
12 from local sales and use taxes,

13 ↪ that was allowed pursuant to this section before the date of that  
14 termination. Except as otherwise provided in NRS 360.232 and  
15 360.320, the business shall, in addition to the amount of the  
16 exemption required to be repaid pursuant to this subsection, pay  
17 interest on the amount due at the rate most recently established  
18 pursuant to NRS 99.040 for each month, or portion thereof, from  
19 the last day of the month following the period for which the  
20 payment would have been made had the partial abatement not  
21 been approved until the date of payment of the tax.

22 **Sec. 14.** Notwithstanding any statutory provision to the  
23 contrary, if the Director approves an application for a partial  
24 abatement pursuant to sections 2 to 16, inclusive, of this act of  
25 local sales and use taxes, the State Controller shall allocate,  
26 transfer and remit an amount equal to all the sales and use taxes  
27 imposed in this State and collected for the period of the partial  
28 abatement from the business for the construction and operation of  
29 a renewable energy system in the same manner as if that amount  
30 consisted solely of the proceeds of taxes imposed by NRS 374.110  
31 and 374.190.

32 **Sec. 15.** Notwithstanding the limitations on generating  
33 capacity set forth in NRS 704.771, the Director may, in  
34 consultation with the Office of Economic Development, make a  
35 determination that a renewable energy system installed on the  
36 property of a business which has been granted a partial abatement  
37 pursuant to sections 2 to 16, inclusive, of this act shall be deemed  
38 to be a net metering system for the purposes of and may  
39 participate in net metering pursuant to NRS 704.766 to 704.775,  
40 inclusive.

41 **Sec. 16.** The Director:

42 1. Shall adopt regulations:

43 (a) Prescribing such requirements for an application for a  
44 partial abatement pursuant to sections 2 to 16, inclusive, of this  
45 act as will ensure that all information and other documentation



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1 *necessary for the Director, in consultation with the Office of*  
2 *Economic Development, to make an appropriate determination is*  
3 *filed with the Director; and*

4 *(b) Requiring each recipient of a partial abatement pursuant*  
5 *to section 2 to 16, inclusive, of this act to file annually with the*  
6 *Director such information and documentation as may be*  
7 *necessary for the Director to determine whether the recipient is in*  
8 *compliance with any eligibility requirements for the partial*  
9 *abatement; and*

10 *2. May adopt such other regulations as the Director*  
11 *determines to be necessary to carry out the provisions of sections 2*  
12 *to 16, inclusive, of this act.*

13 **Sec. 17.** NRS 704.775 is hereby amended to read as follows:

14 704.775 1. The billing period for net metering must be a  
15 monthly period.

16 2. The net energy measurement must be calculated in the  
17 following manner:

18 (a) The utility shall measure, in kilowatt-hours, the net  
19 electricity produced or consumed during the billing period, in  
20 accordance with normal metering practices.

21 (b) If the electricity supplied by the utility exceeds the electricity  
22 generated by the customer-generator which is fed back to the utility  
23 during the billing period, the customer-generator must be billed for  
24 the net electricity supplied by the utility.

25 (c) If the electricity generated by the customer-generator which  
26 is fed back to the utility exceeds the electricity supplied by the  
27 utility during the billing period:

28 (1) Neither the utility nor the customer-generator is entitled  
29 to compensation for the electricity provided to the other during the  
30 billing period.

31 (2) The *value of the* excess electricity which is fed back to  
32 the utility during the billing period is carried forward to the next  
33 billing period ~~as an addition to the kilowatt-hours generated by~~ *at*  
34 *the otherwise applicable rate or time-of-use rate charged to* the  
35 customer-generator *by the utility* ~~in~~ *during* that billing period. ~~If~~  
36 ~~the customer-generator is billed for electricity pursuant to a time-of-~~  
37 ~~use rate schedule, the excess electricity carried forward must be~~  
38 ~~added to the same time of use period as the time of use period in~~  
39 ~~which it was generated unless the subsequent billing period lacks a~~  
40 ~~corresponding time of use period. In that case, the excess electricity~~  
41 ~~carried forward must be apportioned evenly among the available~~  
42 ~~time of use periods.~~

43 (3) ~~Excess~~ *The value of the excess* electricity may be  
44 carried forward to subsequent billing periods indefinitely, but a



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customer-generator is not entitled to receive compensation for any excess electricity that remains if:

(I) The net metering system ceases to operate or is disconnected from the utility's transmission and distribution facilities;

(II) The customer-generator ceases to be a customer of the utility at the premises served by the net metering system; or

(III) The customer-generator transfers the net metering system to another person.

(4) The value of the excess electricity must not be used to reduce any other fee or charge imposed by the utility.

3. If the cost of purchasing and installing a net metering system was paid for:

(a) In whole or in part by a utility, the electricity generated by the net metering system shall be deemed to be electricity that the utility generated or acquired from a renewable energy system for the purposes of complying with its portfolio standard pursuant to NRS 704.7801 to 704.7828, inclusive.

(b) Entirely by a customer-generator, the Commission shall issue to the customer-generator portfolio energy credits for use within the system of portfolio energy credits adopted by the Commission pursuant to NRS 704.7821 and 704.78213 equal to the electricity generated by the net metering system.

4. A bill for electrical service is due at the time established pursuant to the terms of the contract between the utility and the customer-generator.

**Sec. 18.** The Legislature hereby finds that each exemption provided by sections 2 to 16, inclusive, of this act from any ad valorem tax on property or excise tax on the sale, storage, use or other consumption of tangible personal property sold at retail:

1. Will achieve a bona fide social or economic purpose and 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. 19.** 1. This act becomes effective on July 1, 2013.

2. Sections 1 to 16, inclusive, of this act expire by limitation on June 30, 2033.

