

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:

Existing law provides for the partial abatement of certain taxes for certain renewable energy facilities. (NRS 701A.300-701A.390) **Section 3** of this bill revises the authority of a board of county commissioners relating to the approval of an application for a partial abatement of certain taxes submitted by a person who operates a facility for the generation of electricity from renewable energy.

Under existing law, a provider of electric service is entitled to one portfolio energy credit for each kilowatt-hour of electricity that the provider generates, acquires or saves from a portfolio energy system or efficiency measure for the purpose of satisfying the renewable portfolio standard of the provider. (NRS 704.78215) **Section 4** of this bill revises provisions governing the calculation of the portfolio energy credits attributable to certain portfolio energy systems.

Section 5 of this bill clarifies that a court of this State has jurisdiction over a claim or action relating to a renewable energy project located upon certain Indian tribal land under certain circumstances.



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

Section 1. NRS 701A.340 is hereby amended to read as follows:

701A.340 1. "Renewable energy" means:

- (a) Biomass;
- (b) Fuel cells;
- (c) *Geothermal energy*;
- (d) Solar energy;
- ~~((d))~~ (e) Waterpower; or
- ~~((e))~~ (f) Wind.

2. The term does not include coal, natural gas, oil, propane or any other fossil fuel ~~[-, geothermal energy]~~ or nuclear energy.

Sec. 2. NRS 701A.360 is hereby amended to read as follows:

701A.360 1. A person who intends to locate a facility for the generation of process heat from solar renewable energy, a wholesale facility for the generation of electricity from renewable energy ~~[-, a facility for the generation of electricity from geothermal resources]~~ or a facility for the transmission of electricity produced from renewable energy ~~for geothermal resources]~~ in this State may apply to the Director for a partial abatement of the local sales and use taxes, the taxes imposed pursuant to chapter 361 of NRS, or both local sales and use taxes and taxes imposed pursuant to chapter 361 of NRS.

2. A facility that is owned, operated, leased or otherwise controlled by a governmental entity is not eligible for an abatement pursuant to NRS 701A.300 to 701A.390, inclusive.

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

- (a) The Chief of the Budget Division of the Department of Administration;
- (b) The Department of Taxation;
- (c) The board of county commissioners;
- (d) The county assessor;
- (e) The county treasurer; and
- (f) The Office of Economic Development.

4. With the copy of the application forwarded to the county treasurer, the Director shall include a notice that the local jurisdiction may request a presentation regarding the facility. A request for a presentation must be made within 30 days after receipt of the application.



5. The Director shall hold a public hearing on the application. The hearing must not be held earlier than 30 days after all persons listed in subsection 3 have received a copy of the application.

Sec. 3. NRS 701A.365 is hereby amended to read as follows:

701A.365 1. ~~{Except as otherwise provided in subsection 2, the}~~ **The** Director, in consultation with the Office of Economic Development, shall approve an application for a partial abatement pursuant to NRS 701A.300 to 701A.390, inclusive, if the Director, in consultation with the Office of Economic Development, makes the following determinations:

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

(1) State that the facility will, after the date on which a certificate of eligibility for the abatement is issued pursuant to NRS 701A.370, continue in operation in this State for a period specified by the Director, which must be at least 10 years, and will continue to meet the eligibility requirements for the abatement; and

(2) Bind the successors in interest in the facility for the specified period.

(b) The facility 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 facility operates.

(c) No funding is or will be provided by any governmental entity in this State for the acquisition, design or construction of the facility or for the acquisition of any land therefor, except any private activity bonds as defined in 26 U.S.C. § 141.

(d) If the facility will be located in a county whose population is 100,000 or more or a city whose population is 60,000 or more, the facility meets the following requirements:

(1) There will be 75 or more full-time employees working on the construction of the facility during the second quarter of construction, including, unless waived by the Director for good cause, at least 30 percent who are residents of Nevada;

(2) Establishing the facility will require the facility to make a capital investment of at least \$10,000,000 in this State;

(3) The average hourly wage that will be paid by the facility to its employees in this State is at least 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation on July 1 of each fiscal year; and

(4) The average hourly wage of the employees working on the construction of the facility will be at least 150 percent of the average statewide hourly wage, excluding management and



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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.



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(g) The facility is consistent with the State Plan for Economic Development developed by the Executive Director of the Office of Economic Development pursuant to subsection 2 of NRS 231.053.

2. The Director shall not approve an application for a partial abatement of the taxes imposed pursuant to chapter 361 of NRS submitted pursuant to NRS 701A.360 by *a facility for the generation of process heat from solar renewable energy or a wholesale facility for the generation of electricity from ~~geothermal resources~~ renewable energy* unless the application is approved *or deemed approved* pursuant to this subsection. The board of county commissioners of a county must *provide notice to the Director that the board intends to consider an application and, if such notice is given, must* approve or deny the application not later than 30 days after the board receives a copy of the application. The board of county commissioners ~~must~~ :

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

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

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

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

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

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

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

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



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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*



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.*

