

ASSEMBLY BILL NO. 391—ASSEMBLYMEN DALY; AND BOBZIEN

MARCH 18, 2013

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to energy.
(BDR 58-1025)

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; providing that the amount of certain incentives issued by a utility for the installation of certain renewable energy systems on property owned or occupied by a public body may not be used to reduce the cost of the project so as to exempt the project from provisions governing competitive bidding for public works projects; requiring contractors who enter into contracts pursuant to the Green Jobs Initiative to make certain certifications to the Labor Commissioner concerning wages paid to employees who work on such projects; providing that certain utilities which are generally subject only to limited jurisdiction, control and regulation of the Public Utilities Commission of Nevada become subject to the full jurisdiction, control and regulation of the Commission under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 9 and 10 of this bill revise provisions relating to the installation of certain renewable energy systems on property owned or occupied by a public body to provide that the amount of any incentive issued by a utility for the installation of the renewable energy system may not be used to reduce the cost of the project so as to exempt the project from provisions governing competitive bidding for public works projects.

Section 11 of this bill requires any contractor or subcontractor who enters into a contract pursuant to the Green Jobs Initiative to provide written certification to the Labor Commissioner that the employees of the contractor or subcontractor who perform work under the contract are paid the prevailing wage required by the Initiative. (NRS 701B.900-701B.924)



Existing law provides that certain entities which are declared to be utilities but which provide services only to their members are subject only to limited jurisdiction, control and regulation of the Public Utilities Commission of Nevada. (NRS 704.675) **Section 12** of this bill provides that such a utility is subject to the full jurisdiction, control and regulation of the Commission if the Commission determines that the utility or any entity that is owned or controlled by the utility: (1) is being operated without a certificate of public convenience and necessity issued to the utility by the Commission; (2) is supplying energy services to persons other than its own members; (3) is offering energy services outside the geographic area for which it holds a certificate of public convenience and necessity; (4) qualifies as a public utility or utility under applicable law outside the geographic area for which it holds a certificate of public convenience and necessity; or (5) has otherwise violated certain provisions of law relating to utilities.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 701B.265 is hereby amended to read as follows:

701B.265 1. The installation of a solar energy system on property owned or occupied by a public body pursuant to NRS 701B.010 to 701B.290, inclusive, shall be deemed to be a public work for the purposes of chapters 338 and 341 of NRS, regardless of whether the installation of the solar energy system is financed in whole or in part by public money.

2. The amount of any incentive issued by a utility relating to the installation of a solar energy system on property owned or occupied by a public body may not be used to reduce the cost of the project to an amount which would exempt the project from ~~the~~ *any* requirements of *chapter 338 of* NRS . ~~338.020 to 338.090, inclusive.~~

3. As used in this section, "public body" means the State or a county, city, town, school district or any public agency of this State or its political subdivisions.

Sec. 10. NRS 701B.625 is hereby amended to read as follows:

701B.625 1. The installation of a wind energy system on property owned or occupied by a public body pursuant to NRS 701B.400 to 701B.650, inclusive, shall be deemed to be a public work for the purposes of chapters 338 and 341 of NRS, regardless of



1 whether the installation of the wind energy system is financed in
2 whole or in part by public money.

3 2. The amount of any incentive issued by a utility relating to
4 the installation of a wind energy system on property owned or
5 occupied by a public body may not be used to reduce the cost of the
6 project to an amount which would exempt the project from ~~the~~ **any**
7 requirements of **chapter 338 of NRS . ~~338.020 to 338.090,~~**
8 **~~inclusive.~~**

9 3. As used in this section, "public body" means the State or a
10 county, city, town, school district or any public agency of this State
11 or its political subdivisions.

12 **Sec. 11.** NRS 701B.924 is hereby amended to read as follows:

13 701B.924 1. The State Public Works Board shall, within 90
14 days after June 9, 2009, determine the specific projects to
15 weatherize and retrofit public buildings, facilities and structures,
16 including, without limitation, traffic-control systems, and to
17 otherwise use sources of renewable energy to serve those buildings,
18 facilities and structures pursuant to the provisions of this section and
19 NRS 701B.921. The projects must be prioritized and selected on the
20 basis of the following criteria:

21 (a) The length of time necessary to commence the project.

22 (b) The number of workers estimated to be employed on the
23 project.

24 (c) The effectiveness of the project in reducing energy
25 consumption.

26 (d) The estimated cost of the project.

27 (e) Whether the project is able to be powered by or to otherwise
28 use sources of renewable energy.

29 (f) Whether the project has qualified for participation in one or
30 more of the following programs:

31 (1) The Solar Energy Systems Incentive Program created by
32 NRS 701B.240;

33 (2) The Renewable Energy School Pilot Program created by
34 NRS 701B.350;

35 (3) The Wind Energy Systems Demonstration Program
36 created by NRS 701B.580;

37 (4) The Waterpower Energy Systems Demonstration
38 Program created by NRS 701B.820; or

39 (5) An energy efficiency or energy conservation program
40 offered by a public utility, as defined in NRS 704.020, pursuant to a
41 plan approved by the Public Utilities Commission of Nevada
42 pursuant to NRS 704.741.

43 2. The board of trustees of each school district shall, within 90
44 days after June 9, 2009, determine the specific projects to
45 weatherize and retrofit public buildings, facilities and structures,



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1 including, without limitation, traffic-control systems, and to
2 otherwise use sources of renewable energy to serve those buildings,
3 facilities and structures pursuant to the provisions of this section and
4 NRS 701B.921. The projects must be prioritized and selected on the
5 basis of the following criteria:

6 (a) The length of time necessary to commence the project.

7 (b) The number of workers estimated to be employed on the
8 project.

9 (c) The effectiveness of the project in reducing energy
10 consumption.

11 (d) The estimated cost of the project.

12 (e) Whether the project is able to be powered by or to otherwise
13 use sources of renewable energy.

14 (f) Whether the project has qualified for participation in one or
15 more of the following programs:

16 (1) The Solar Energy Systems Incentive Program created by
17 NRS 701B.240;

18 (2) The Renewable Energy School Pilot Program created by
19 NRS 701B.350;

20 (3) The Wind Energy Systems Demonstration Program
21 created by NRS 701B.580;

22 (4) The Waterpower Energy Systems Demonstration
23 Program created by NRS 701B.820; or

24 (5) An energy efficiency or energy conservation program
25 offered by a public utility, as defined in NRS 704.020, pursuant to a
26 plan approved by the Public Utilities Commission of Nevada
27 pursuant to NRS 704.741.

28 3. The Board of Regents of the University of Nevada shall,
29 within 90 days after June 9, 2009, determine the specific projects to
30 weatherize and retrofit public buildings, facilities and structures,
31 including, without limitation, traffic-control systems, and to
32 otherwise use sources of renewable energy to serve those buildings,
33 facilities and structures pursuant to the provisions of this section and
34 NRS 701B.921. The projects must be prioritized and selected on the
35 basis of the following criteria:

36 (a) The length of time necessary to commence the project.

37 (b) The number of workers estimated to be employed on the
38 project.

39 (c) The effectiveness of the project in reducing energy
40 consumption.

41 (d) The estimated cost of the project.

42 (e) Whether the project is able to be powered by or to otherwise
43 use sources of renewable energy.

44 (f) Whether the project has qualified for participation in one or
45 more of the following programs:



(1) The Solar Energy Systems Incentive Program created by NRS 701B.240;

(2) The Renewable Energy School Pilot Program created by NRS 701B.350;

(3) The Wind Energy Systems Demonstration Program created by NRS 701B.580;

(4) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820; or

(5) An energy efficiency or energy conservation program offered by a public utility, as defined in NRS 704.020, pursuant to a plan approved by the Public Utilities Commission of Nevada pursuant to NRS 704.741.

4. As soon as practicable after an entity described in subsections 1, 2 and 3 selects a project, the entity shall proceed to enter into a contract with one or more contractors to perform the work on the project. The request for proposals and all contracts for each project must include, without limitation:

(a) Provisions stipulating that all employees of the contractors and subcontractors who work on the project must be paid prevailing wages pursuant to the requirements of chapter 338 of NRS ~~and~~ *requiring that each contractor and subcontractor certify to the Labor Commissioner in writing that all employees of the contractor or subcontractor who work on the project are paid prevailing wages as required by this paragraph;*

(b) Provisions requiring that each contractor and subcontractor employed on each such project:

(1) Employ a number of persons trained as described in paragraph (b) of subsection 3 of NRS 701B.921 that is equal to or greater than 50 percent of the total workforce the contractor or subcontractor employs on the project; or

(2) If the Director of the Department determines in writing, pursuant to a request submitted by the contractor or subcontractor, that the contractor or subcontractor cannot reasonably comply with the provisions of subparagraph (1) because there are not available a sufficient number of such trained persons, employ a number of persons trained as described in paragraph (b) of subsection 3 of NRS 701B.921 or trained through any apprenticeship program that is registered and approved by the State Apprenticeship Council pursuant to chapter 610 of NRS that is equal to or greater than 50 percent of the total workforce the contractor or subcontractor employs on the project;

(c) A component pursuant to which persons trained as described in paragraph (b) of subsection 3 of NRS 701B.921 must be classified and paid prevailing wages depending upon the classification of the skill in which they are trained; and



(d) A component that requires each contractor or subcontractor to offer to employees working on the project, and to their dependents, health care in the same manner as a policy of insurance pursuant to chapters 689A and 689B of NRS or the Employee Retirement Income Security Act of 1974.

5. The State Public Works Board, each of the school districts and the Board of Regents of the University of Nevada shall each provide a report to the Interim Finance Committee which describes the projects selected pursuant to this section and a report of the dates on which those projects are scheduled to be completed.

Sec. 12. NRS 704.675 is hereby amended to read as follows:

704.675 ~~Every~~

1. Except as otherwise provided in subsection 2, every cooperative association or nonprofit corporation or association and every other supplier of services described in this chapter supplying those services for the use of its own members only is hereby declared to be affected with a public interest, to be a public utility, and to be subject to the jurisdiction, control and regulation of the Commission for the purposes of NRS 703.191, 704.330, 704.350 to 704.410, inclusive, but not to any other jurisdiction, control and regulation of the Commission or to the provisions of any section not specifically mentioned in this ~~section~~ subsection.

2. The limitations set forth in subsection 1 governing the applicability of this chapter and the jurisdiction, control and regulation of the Commission do not apply to a cooperative association, nonprofit corporation or association or any other supplier of services described in this chapter that supplies energy services for the use of its own members if the Commission determines that the cooperative association, nonprofit corporation or association or other supplier of services described in this chapter, or any entity that is owned or controlled by the cooperative association, nonprofit corporation or association or other supplier of services:

(a) Is being operated without a certificate of public convenience and necessity as required by NRS 704.330;

(b) Is supplying energy services to persons other than its own members;

(c) Is offering energy services outside the geographic area for which it holds a certificate of public convenience and necessity issued by the Commission;

(d) Qualifies as a public utility or utility under NRS 704.020 outside the geographic area for which it holds a certificate of public convenience and necessity issued by the Commission; or

(e) Has otherwise violated any provision of NRS 704.330.

3. As used in this section, "energy services":



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(a) Includes, without limitation, assuming responsibility for furnishing or delivering energy to another person, the operation of a system for furnishing or delivering energy to another person and assuming responsibility for the maintenance of a system for furnishing or delivering energy to another person.

(b) Does not include the transmission of electricity which originates outside of the area for which a certificate of public convenience and necessity has been issued to a cooperative association, nonprofit corporation or association or other supplier of services described in this chapter, and which is delivered to an electric utility.

Sec. 12.5. NRS 704.865 is hereby amended to read as follows:

704.865 1. A person, other than a local government, shall not commence to construct a utility facility in the State without first having obtained a permit therefor from the Commission. The replacement of an existing facility with a like facility, as determined by the Commission, does not constitute construction of a utility facility. Any facility, with respect to which a permit is required, must thereafter be constructed, operated and maintained in conformity with the permit and any terms, conditions and modifications contained therein. A permit may only be issued pursuant to NRS 704.820 to 704.900, inclusive. Any authorization relating to a utility facility granted under other laws administered by the Commission constitutes a permit under those sections if the requirements of those sections have been complied with in the proceedings leading to the granting of the authorization.

2. A permit may be transferred, subject to the approval of the Commission, to a person who agrees to comply with the terms, conditions and modifications contained therein.

3. NRS 704.820 to 704.900, inclusive, do not apply to any utility facility:

(a) For which, before July 1, 1971, an application for the approval of the facility has been made to any federal, state, regional or local governmental agency which possesses the jurisdiction to consider the matters prescribed for finding and determination in NRS 704.890;

(b) For which, before July 1, 1971, a governmental agency has approved the construction of the facility and the person has incurred indebtedness to finance all or part of the cost of the construction;

(c) Over which an agency of the Federal Government has exclusive jurisdiction; or

(d) Owned by a supplier of services described in NRS 704.673 or *subsection 1 of NRS* 704.675 that:

(1) Is not jointly owned by or with an entity that is not such a supplier of services; and



1 (2) Is subject to the provisions of the National Environmental
2 Policy Act of 1969, 42 U.S.C §§ 4321 et seq.

3 4. Any person intending to construct a utility facility excluded
4 from NRS 704.820 to 704.900, inclusive, pursuant to paragraph (a)
5 or (b) of subsection 3 may elect to waive the exclusion by delivering
6 notice of its waiver to the Commission. NRS 704.820 to 704.900,
7 inclusive, thereafter apply to each utility facility identified in the
8 notice from the date of its receipt by the Commission.

9 **Sec. 13.** 1. This act becomes effective on October 1, 2013.

10 2. Section 1 of this act expires by limitation on June 30, 2049.

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