

Amendment No. 968

Senate Amendment to Assembly Bill No. 388 Second Reprint (BDR 58-517)

Proposed by: Senate Committee on Commerce, Labor and Energy**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

JMM/MSN



Date: 6/3/2013

A.B. No. 388—Revises provisions relating to renewable energy. (BDR 58-517)



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 ~~removes the requirement that an application for a partial abatement of certain taxes for certain geothermal facilities be approved by the board of county commissioners before the application can be approved by the Director of the Office of Energy.~~ **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 ~~or 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 ~~or 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.

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

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

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

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

15 (4) The average hourly wage of the employees working on the construction
16 of the facility will be at least 150 percent of the average statewide hourly wage,
17 excluding management and administrative employees, as established by the
18 Employment Security Division of the Department of Employment, Training and
19 Rehabilitation on July 1 of each fiscal year and:

20 (I) The employees working on the construction of the facility must be
21 provided a health insurance plan that includes an option for health insurance
22 coverage for dependents of the employees; and

23 (II) The cost of the benefits provided to the employees working on the
24 construction of the facility will meet the minimum requirements for benefits
25 established by the Director by regulation pursuant to NRS 701A.390.

26 (e) If the facility will be located in a county whose population is less than
27 100,000 or a city whose population is less than 60,000, the facility meets the
28 following requirements:

29 (1) There will be 50 or more full-time employees working on the
30 construction of the facility during the second quarter of construction, including,
31 unless waived by the Director for good cause, at least 30 percent who are residents
32 of Nevada;

33 (2) Establishing the facility will require the facility to make a capital
34 investment of at least \$3,000,000 in this State;

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

40 (4) The average hourly wage of the employees working on the construction
41 of the facility will be at least 150 percent of the average statewide hourly wage,
42 excluding management and administrative employees, as established by the
43 Employment Security Division of the Department of Employment, Training and
44 Rehabilitation on July 1 of each fiscal year and:

45 (I) The employees working on the construction of the facility must be
46 provided a health insurance plan that includes an option for health insurance
47 coverage for dependents of the employees; and

48 (II) The cost of the benefits provided to the employees working on the
49 construction of the facility will meet the minimum requirements for benefits
50 established by the Director by regulation pursuant to NRS 701A.390.

51 (f) The financial benefits that will result to this State from the employment by
52 the facility of the residents of this State and from capital investments by the facility
53 in this State will exceed the loss of tax revenue that will result from the abatement.

(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 the Director, in consultation with the Office, determines that such action is necessary:

(a) Approve an application for a partial abatement for a facility that does not meet the requirements set forth in paragraph (d) or (e) of subsection 1; or

(b) Add additional requirements that a facility must meet to qualify for a partial abatement.

~~4. 127~~ The Director shall cooperate with the Office of Economic Development in carrying out the provisions of this section.

~~5. 147~~ The Director shall submit to the Office of Economic Development an annual report, at such a time and containing such information as the Office may require, regarding the partial abatements granted pursuant to this section.

Sec. 4. NRS 704.78215 is hereby amended to read as follows:

704.78215 1. Except as otherwise provided in this section or by specific statute, a provider 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.

2. The Commission may adopt regulations that give a provider more than one portfolio energy credit for each kilowatt-hour of electricity saved by the provider during its peak load period from energy efficiency measures.

3. *Except as otherwise provided in this subsection, for portfolio energy systems placed into operation on or after January 1, 2016, the amount of electricity generated or acquired from a portfolio energy system does not include the amount of any electricity used by the portfolio energy system for its basic operations that reduce the amount of renewable energy delivered to the transmission grid for distribution and sale to customers of the provider. The provisions of this subsection do not apply to a portfolio energy system placed into operation on or after January 1, 2016, if a provider entered into a contract for the purchase of electricity generated by the portfolio energy system on or before December 31, 2012. For the purposes of this subsection, the amount of any electricity used by a portfolio energy system for its basic operations ~~does not~~;*

(a) Except as otherwise provided in paragraph (b), includes electricity used for the heating, lighting, air-conditioning and equipment of a building located on the site of the portfolio energy system, and for operating any other equipment located on such site.

(b) Does not include the electricity used by a portfolio energy system that generates electricity from geothermal energy for the extraction and transportation of geothermal brine ~~that~~ or used to pump or compress geothermal brine.

Sec. 5. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *A court of this State has jurisdiction pursuant to subsection 1 of NRS 14.065 with respect to any claim or action relating to a renewable energy project located upon Indian tribal land if:*

(a) The Indian tribe occupying the tribal land has a reservation of not less than 60,000 acres;

(b) The Indian tribal land is located in a county whose population is 700,000 or more; and

(c) The governing body of the Indian tribe has expressly waived its sovereign immunity with respect to such claim or action in a written agreement, contract or other instrument which expressly states that the terms of the agreement, contract or other instrument must be governed by the applicable laws of this State.

2. *As used in this section, "renewable energy project" means a project for the construction or installation of a facility for the generation of renewable energy, as defined in NRS 701.070.*