

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Seventh Session
February 28, 2013**

The Committee on Taxation was called to order by Chairwoman Irene Bustamante Adams at 1:32 p.m. on Thursday, February 28, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chairwoman
Assemblywoman Peggy Pierce, Vice Chairwoman
Assemblywoman Teresa Benitez-Thompson
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (excused)
Assemblywoman Marilyn K. Kirkpatrick (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Russell J. Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Gariety Pruitt, Committee Assistant

OTHERS PRESENT:

Jeff Fontaine, Executive Director, Nevada Association of Counties
Nancy Boland, representing Nevada Association of Counties
Gary Milliken, representing Churchill County
Joshua Hicks, representing First Solar, Inc.
Tom Clark, representing Sempra U.S. Gas & Power
Alfredo Alonso, representing Ormat Technologies
Kyle Davis, representing the Nevada Conservation League & Education Fund
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Stacey Crowley, Director, Office of Energy, Office of the Governor

Chairwoman Bustamante Adams:

I will open the hearing on Assembly Bill 32. Could the presenter of this bill please come to the table?

Assembly Bill 32: Revises the provisions governing certain tax abatements for new or expanded businesses and renewable energy facilities. (BDR 32-173)

Jeff Fontaine, Executive Director, Nevada Association of Counties:

On behalf of the Nevada Association of Counties (NACO) I want to thank you for the opportunity to present Assembly Bill 32 to the Committee this afternoon. With me today is Nancy Boland, an Esmeralda County Commissioner and our NACO president this year.

Under current law, both the Office of Economic Development and the state Office of Energy can grant abatements to new and expanding businesses. The taxes that are abated are those that generate revenue for local government operations. [Continued to read from prepared testimony ([Exhibit C](#)).] I would be happy to answer any questions.

Chairwoman Bustamante Adams:

Ms. Boland, do you want to present any testimony?

Nancy Boland, representing Nevada Association of Counties:

I am an Esmeralda County Commissioner and also the president of NACO this year. I would just like to elaborate a little more on a point Mr. Fontaine brought up. The ability to have flexibility in the amount of the abatement would be a wonderful tool. Not only would there be different impacts on some of these projects from county to county, but also within one county. If a project is going to be located close to a town where you already have law enforcement, already have a fire department, are close to an ambulance, and there is a place to put solid waste, it would have far less impact than it would if it were being pioneered in an area that was far away from any community. As the statute is now, having one flat amount of abatement and yes or no as the only options is difficult for counties. In my county of Esmeralda, we have very little in the way of retail, so if a project is built there, most of the economic benefits would likely go to Nye County or a neighboring county, where they have more housing and more retail outlets. I hope you favorably consider this bill if for that purpose alone.

Chairwoman Bustamante Adams:

Are there any questions from the Committee members?

Assemblyman Hickey:

Is this more of a concern among the rural counties that make up NACO, or is the concern equally shared with the larger counties?

Jeff Fontaine:

I think you characterized it correctly. It seems to be more of a concern with the rural counties, especially because they are for the most part the ones hosting these renewable energy projects. As I had mentioned in my testimony, we believe the Office of Economic Development has been working with the counties and cities in those tax abatements for the other types of businesses.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] We will take statements from those in support of A.B. 32.

Gary Milliken, representing Churchill County:

We are in favor of this bill. It mentions changes in the way geothermal resource production is being handled now. Considering how many geothermal facilities we have in Churchill County, this is an important piece of legislation to us.

Chairwoman Bustamante Adams:

Can you elaborate a little bit about Churchill County and the geothermal projects there?

Gary Milliken:

I do not have that information with me but a study has been done. I can get that to you and the other Committee members. It shows the importance of geothermal plants to Churchill County.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] Is anyone else here in support? [There was no one.] We will now move to opposition. Is there anyone here in opposition to A.B. 32?

Joshua Hicks, representing First Solar, Inc.:

I would like to read from prepared testimony in opposition to at least some sections of this bill.

I am here today on behalf of First Solar, Inc., the world's leading manufacturer of thin-film photovoltaic modules and the nation's leading developer of utility-scale solar photovoltaic generating facilities. Here in Nevada alone, over 500 megawatts of First Solar modules will be installed. [Continued to read from prepared testimony ([Exhibit D](#)).]

Chairwoman Bustamante Adams:

Are there any questions from the Committee members?

Assemblyman Grady:

Mr. Fontaine testified that he thought that this bill would look at the rural areas more than the urban areas, but I think all four of the complexes you talked about are in Clark County. Can you give us just a ballpark figure on the dollar amount of abatements that they have received from Clark County?

Joshua Hicks:

I cannot tell you exactly what the dollar amounts are on all of them as some of them were built by my client but are operated by other entities. You are correct that all of these are in Clark County. For the Silver State North project there was actually a fiscal note put together by the state. I did not bring a copy of that but I would happy to get that to you. It was still in the tens of millions of dollars of actual tax revenues coming in after the abatements.

Assemblywoman Neal:

I had a question on page 11, lines 22 and 23. What are the concerns that you have with the words "not exceed 55 percent of the taxes on real and personal property"?

Joshua Hicks:

The concern has to do with the level of certainty that goes into these projects. Without the language in this bill, the level of those abatements is certain. A developer could look at this and know how long their abatement is going to last and what level it will be. By putting in the language, for example on lines 20 and 21 of page 11, "Be for a duration that does not exceed the 20 fiscal years immediately following the date of approval of the application"; lines 22 and 23 of page 11, "Not exceed 55 percent of the taxes on real and personal property payable by the facility each year"; and going down further to lines 30 and 31 of page 11, "Be for a duration that does not exceed 3 years beginning on the date of the approval of the application," it leaves a level of uncertainty and discretion in there that the abatement could be anything. Under this language, for example on property tax, it could be anything from 0 to 20 years. Those kinds of issues make it very difficult to deal with the economics for a developer who is trying to plan a project well in advance.

It is important to note that the abatement approval and the abatement application process are things that happen at the tail end of the whole planning process. These projects are planned. They are sited. Power purchase agreements are negotiated in advance of having these abatements and under an assumption that they will get it, knowing what the conditions are that they are applying for. Having these changes at the end of the game is what causes a lot of uncertainty and that is the basis for our objection.

Assemblywoman Benitez-Thompson:

Could we get some comments from you on record about what your thoughts are about the attestation part and the signing of an annual letter talking about agreements with all of the conditions of the abatement?

Joshua Hicks:

We do not have any issues with that. There is in fact an existing requirement for an annual report that gets submitted on these projects. Every year, on the anniversary of the date the application is approved, a report has to be submitted that documents everything that has happened in the last year, such as wage requirements and so on. Having an attestation is really what we look at anyway. The state certainly has the ability to go in and audit as well, so there is no objection to that aspect.

Assemblyman Hardy:

This has nothing to do with the bill. It is more of an education question for me. You made the comment about this highly competitive market. At what point does this highly competitive market not need these abatements any longer? Is there a day in the future this will happen? It seems as though there is always

going to be the idea that they use it as a utility to say that we need these tax abatements.

Joshua Hicks:

That is a good question and I do not know what the magic time is. I can tell you right now it is necessary to create a competitive environment to have these kinds of abatements. I am sure my colleagues would agree that the industry as a whole is becoming much more efficient and cost-effective than it has been in the past. There is still the point that these abatements are being offered by neighboring states and it is important to have our state be competitive in order to keep Nevada as an attractive site for these kinds of projects.

Assemblywoman Neal:

What kinds of real and property tax percentages are other states offering?

Joshua Hicks:

I do not know the answer to that question. We could get some information for you on that.

Tom Clark, representing Sempra U.S. Gas and Power:

We are actually the partner agency with First Solar, Inc., on the projects that are in Boulder City. We are the owners and they are the contractors. We have a really good working relationship.

In answer to your question it goes back to the debate of Assembly Bill No. 522 of the 75th Session. Assemblywoman Kirkpatrick, who does a very good job on her research, identified what the other western states were doing and we mirrored or did better than what the other states with similar resources were doing. That is the genesis of A.B. No. 522 of the 75th Session and the way we wrote those numbers into the bill, so we could be competitive with New Mexico, Colorado, Utah, Arizona, and others.

Chairwoman Bustamante Adams:

I have a question for Mr. Hicks. In paragraph 3 ([Exhibit D](#)), where you talk about capital investment and your approximately 2,000 jobs for Nevadans, can you tell me how many of those jobs were construction-related and how many of those jobs were permanent?

Joshua Hicks:

The vast majority of those jobs were construction-related jobs. That is just the nature of this business. Solar facilities have a heavy construction period, but once they are up and running, not a lot of manpower is needed. I cannot tell

you the exact breakdown of those 2,000 jobs but the vast majority of those are construction-related jobs.

Chairwoman Bustamante Adams:

Could you tell me how many jobs you still have now that those plants are up and running?

Joshua Hicks:

I could tell you at least with respect to the Silver State North project, where First Solar is doing the operations and maintenance. I believe they have about five to six full-time employees. They will occasionally have more when they do warranty work or repairs, or have something out of the ordinary done.

Tom Clark:

On the Copper Mountain projects out in Boulder City, we had thousands of people building it but we now have about 20 people who are full-time employed engineers and folks of that nature who make sure the system operates on a regular basis.

Chairwoman Bustamante Adams:

Can you tell me how many of those jobs are contracted or are they Nevadans?

Tom Clark:

They are Nevadans.

Assemblywoman Benitez-Thompson:

This may be more appropriate for Mrs. Crowley to answer, but I am interested to hear what the average abatement was for real and personal property on some of these projects.

Tom Clark:

I do not have those specifics but we will definitely get those to you. I will note that the amount of money that is brought back into the community is quite substantial, especially for Boulder City and Clark County, but we will get those statistics for you as soon as we can.

Chairwoman Bustamante Adams:

Mrs. Crowley is in the audience and during her testimony she may have an answer as well.

Are there any questions from the members of the Committee? [There were none.]

Tom Clark:

One last point I would make is that later in March, Sempra U.S. Gas & Power Company will be announcing an additional 250 megawatts of solar capacity in the Boulder City area. This will result in hundreds of jobs and more incentives. I go back to Mr. Hicks' testimony that we need to know what the balance sheet is going to look like. It is not just our developers and contractors who need to know that. The microscope comes down from Wall Street. They want to know what the playing field looks like before they will finance these projects. I think the debate that occurred with A.B. No. 522 of the 75th Session has brought in a tremendous number of these projects. Whether it be our projects or others, we would like to keep the current system in place, as it is working. The Office of Energy is doing a phenomenal job holding our feet to the fire. They are making sure we keep the promises we make through the abatement process, about the numbers of jobs we commit to Nevadans and the salary that we are going pay them. They keep a very close eye on the commitments we make to the State of Nevada. We put those in the bill because we want those commitments. We make those commitments so we can justify the incentives we get to build these projects, while remaining competitive with the other western states.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.]

Alfredo Alonso, representing Ormat Technologies:

I have been before this Committee in the past opposing this type of legislation. The individuals before me spoke of most of the issues that I would touch upon.

It is important to understand with the job issue that the small number on the back end actually is a good thing for a county, especially when you have good-paying jobs that pay health benefits and ultimately take very little in terms of services from a county. You have a situation where the draw on a county is very minimal.

Another important point to note is that this is on federal land. Most of these projects are on land that would never be used for anything but this type of technology. If not for leases on mining and renewable energy, this land simply cannot be used unless the federal government ultimately transfers, trades, or sells the land.

This is important to understand because this is new money, so whether this body decides to change those abatements or not, it is important to understand that these developers need consistency. You simply cannot get financing with

what is in this bill. This bill would be a situation where one could come in and get the full amount and the other could get 10 percent. There is no way to get financing under those circumstances.

In the view of our company, and I think for other renewable companies, this effectively kills the abatements. This is obviously arguable and I think a pretty standard concern across the board.

Assemblyman Hardy questioned when we will be done with these abatements. I guess it will again be up to this body and how much you want to attract this type of business to your state. There are abatements for practically any type of business. As they continue to be competitive, drop in price, or become the norm, ultimately you as a body may decide we do not need to do this anymore. Again, the reason these are competitive and we need abatements, in the most significant area for renewable energy, and particularly in the case of Ormat for geothermal, is that California, Utah, and Hawaii have suddenly become a hotbed. I think that these incentives are incredibly important.

Having rules that apply across the board and treat everyone fairly is most important to companies like Ormat.

Assemblyman Hickey:

Your points are well-made and well-taken by me in regard to the uncertainties that the companies face. You also understand the plight of counties, because in another hearing we might hear you representing a county. Is there a way to address the concerns of the rural counties without destroying the businesses that you argue favorably are important to them?

Alfredo Alonso:

Obviously there may be some way to have discussions on how some of the concerns that the counties have could be alleviated. I would be glad to be part of those discussions. The only caution I give is I think when this was thought through it was about consistency. Ormat, unfortunately, was not considered a renewable energy for various reasons confusing to me, so this does not even apply to geothermal. Geothermal does not have the ability to get these abatements. I think these are all public policy questions that we could probably sit in a room and hash out, but, at the end of the day, I think the consistency portion and the fairness issue are the most important.

Assemblywoman Benitez-Thompson:

I was wondering if I could get your feedback on section 1, subsections 1 and 2, about the notice of deficiency coming from the tax department and having that deficiency amount tolled against the partial abatement. It seems like a good

thought, that if someone is deficient in taxes to take it out of a different pot. I just wanted to have some type of comment on the Legislative record about that section of the bill.

Alfredo Alonso:

As far as I understand, and I think the Office of Energy can probably attest to this, I think already in the statute you have language that requires those reports, so obviously the Office of Energy is going to know whether someone is deficient or not. I do not think we would have a problem with that simply being reported. It would probably give this body more information as to how those abatements are being used and whether they are worthwhile at all. I think there are also a lot of intangibles that fall into this that the Office of Energy looks into on a yearly basis, and clearly that has to be taken into account as well.

Assemblywoman Neal:

You brought up a really good point. I would like to ask Mr. Fontaine a question. My question is concerning section 6. I know you want flexibility, but how are you going to give certainty to the industry?

Jeff Fontaine:

What we believe will give certainty is for each county to adopt an ordinance in a public hearing that would address the policies that their board of county commissioners would use to look at these applications for tax abatements, as well as the criteria. This may stray a little bit from your question, but I want to point out that within the Office of Economic Development they do have flexibility in the amount of property tax abatements they can grant. I think it is up to 50 percent for up to 10 years. All we are asking for is a similar situation for county governments.

I have listened to the testimony and I certainly understand the need to have more information about these tax abatements up front in the planning stages. I recognize the long timeframe involved in the planning and development of these projects. Perhaps the change that we could offer here, in terms of providing a little bit more certainty, is the process for actually going to a county to seek the tax abatement could occur earlier in the planning stage. It does not necessarily have to happen at the time that they submit an application to the state Office of Energy for example, so there may be some opportunity to do that earlier rather than later, so they know exactly where they are.

Assemblywoman Neal:

So in terms of page 11, line 20, where you have the duration not to exceed the 20 fiscal years, are you going to allow some level of extension? For instance, if it looks like a company may need 25 years in order to secure financing and this

conversation is happening early within the planning, can you then make that change?

Jeff Fontaine:

From our point of view, 20 years would be the maximum term, as it is stated in the statute. What we would like to have the counties be able to do is establish a term that might be 19 years or might be 10 years. From what we understand, most of the need for these types of tax abatements occur early on in the initial stages of the project. That is why the sales and use tax abatement is for a period of 3 years, but property taxes for 20 years is a long time.

I also want to note that in addition to the 55 percent of the property taxes that are abated, of the remaining 45 percent, 45 percent goes to the renewable energy fund. Effectively what we are looking at here is less than 25 percent, or 24.75 percent, of property taxes for these types of projects that go to the local entities.

Alfredo Alonso:

As a follow-up I think it is important to know that the reason they are 20 years is that is your average power purchase agreement. So everyone understands what that is, it is basically for whoever is going to purchase. It could be a utility or a utility outside of the state. Obviously, the intent has always been to ultimately try to export some of this and create a situation where the state is again making money off of the exportation of our natural resources: sun, wind, and, in our case, very hot water.

So it is important to know that the keys to getting financing are certainty of the marketplace and those power purchase agreements. You simply will never get financing without one, so if you are now going to make those shorter I am not sure that you would ever get financing on a project in the State of Nevada again.

Assemblyman Grady:

Mr. Fontaine, if you took a dollar of abatement, can you break down where that would go? How much is the state giving up out of that dollar? How much are the school districts giving up? How much are the local governments giving up? Do you have those figures by chance?

Jeff Fontaine:

I will use an example of a project that received a tax abatement back in 2010. This is actually a geothermal project in Pershing County that was approved by Pershing County, so they agreed to the abatement in this case. For the 20-year abatement period the total property taxes that would be due during the period

would be about \$16.7 million. Of that \$9.2 million would be abated. The amount of the total local property taxes that would then go to the renewable energy fund during that period would be about \$3.4 million. If you look at all the property taxes that are abated, again 55 percent to the local governments, and then the 17 cents of debt service that goes to the state to pay off the debt service, that is about \$1 million for the 20-year period.

The calculation that I did is basically the property taxes that are reduced, so that would 55 percent of the property taxes that are abated, plus the 45 percent of the 45 percent that is transferred to the renewable energy fund. During a 20-year abatement period local governments would have about \$12.6 million less in property taxes and the state would have about \$1 million less in property taxes.

There is also sales and use tax. In the breakout for this particular project the applicant received about \$1.3 million in sales and use tax abatements. Of that about \$700,000 was to local taxes and the difference to state taxes. The point in all of this is that over a 20-year period more than 90 percent of the taxes that are lost in this transaction would be to local governments.

Chairwoman Bustamante Adams:

Please go back to the question Assemblywoman Benitez-Thompson had on section 1 regarding the deficiency. Could you shed some light on that portion of your bill for her?

Jeff Fontaine:

In section 1 the issue is that these tax abatements can last 20 years, and in some cases a little bit less. In the event an applicant did not meet the conditions of their tax abatement, we are concerned about the ability to get those taxes back after the statute of limitations expired. I think in some cases that is 3 years.

It is conceivable that we could have a situation where a company has a 20-year tax abatement, in years 5 and 6 something happens and the applicant does not meet the conditions of the tax abatement and we do not find that out until year 8. We do not believe we can get those taxes back. We are simply trying to fix that problem.

Alfonso Alfredo:

I think a better answer to Assemblywoman Benitez-Thompson's question, from our standpoint, is again some of these solar projects are billion-dollar projects. It costs hundreds of millions of dollars to put one of these projects in the ground. I understand Mr. Fontaine's and the counties' issue. If you do not

finish building it, the county is out. I would like to find out where someone has actually started construction and not finished it. I honestly do not know of one yet. The idea that you start it and not finish it is just silly. No one is going to put that much money into a project. The infrastructure in the ground, particularly with some of these very expensive facilities, by itself could be liened. I just do not see that concern because of the cost of these energy facilities. It just does not happen.

Chairwoman Bustamante Adams:

Are there any other individuals interested in presenting opposition to this bill?

Kyle Davis, representing the Nevada Conservation League & Education Fund:

A lot of this bill has already been discussed so I will not add too much to the discussion. Our main point of opposition is that we feel if this bill is implemented it would cause a huge problem in terms of getting new responsibly sited renewable energy projects in place. We think that is an important part of what our state is doing, not only for the economic development impacts, but for the clean energy that comes from it.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] We will move into the neutral position. Those in neutral please come to the table.

Wes Henderson, representing the Nevada League of Cities and Municipalities:

We are neutral on this bill, but we do share the concerns of NACO about one level of government being able to abate the taxes where the revenue goes to another level of government, without the level of government whose taxes are being abated having a say in the process.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.]

Stacey Crowley, Director, Office of Energy, Office of the Governor:

I am here in neutral on this bill. There has been good discussion with the folks who came up and talked earlier. I will give you our perspective and then try to answer some of the questions that were asked earlier.

The perspective from the Office of Energy and the state is that renewable energy is one of the key sectors in the economic development strategy for the Governor and for the state. We feel it is an important industry to support. Creating additional and variable frugal processes will likely result in the dilution

of the state's policy as it pertains to the support of the renewable energy industry. Large-scale developers, as you heard, do look to the state as a whole for cohesive and impactful programs and support. They do make that a factor in their decisions about where and even if they will develop in the state. There has been significant impact and value from these projects in the state over the years. We saw about 640 megawatts of projects come through our abatement program, which resulted in about \$3.2 billion in capital investment, so I think these projects bring a significant impact. As stated before, much of this is on public land, where no other projects would likely have occurred. I am happy to take any questions.

Chairwoman Bustamante Adams:

Are there any questions from the members of the Committee? [There were none.] Are there any others in the neutral position? [There was no one.] I will close the hearing on A.B. 32. Is there any public comment? Seeing none the meeting is adjourned [at 2:20 p.m.].

RESPECTFULLY SUBMITTED:

Gina Hall
Committee Secretary

APPROVED BY:

Assemblywoman Irene Bustamante Adams
Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: February 28, 2013

Time of Meeting: 1:32 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 32	C	Jeff Fontaine	Prepared testimony
A.B. 32	D	Joshua Hicks	Prepared testimony