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FIRST REPRINT

S.B. 416

SENATE BILL NO. 416—SENATOR HARDY

MARCH 17, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes regarding the use of decommissioned power plant sites. (BDR 58-236)

FISCAL NOTE: Effect on Local Government: No.
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 utilities; requiring an electric utility to identify certain nonproductive assets as surplus; authorizing the Public Utilities Commission of Nevada to classify certain nonproductive electric utility assets as surplus; requiring an electric utility to create a timely plan for the decommissioning and disposal of surplus assets and carry out such a plan; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a public utility to recover the operational costs of all assets from its customers through the payment of rates for utility services. (NRS 704.110) **Section 10** of this bill requires any electric utility which owns certain generation assets in this State to provide the Public Utilities Commission of Nevada with a list of certain assets and to identify those assets which are not being used or reasonably planned for future use in generating electricity as surplus. **Section 11** of this bill authorizes the Commission to identify certain nonproductive assets of an electric utility as not reasonably held for future use in generating electricity as surplus. **Section 12** of this bill requires an electric utility to create a plan for the timely cleanup and disposal of surplus assets. **Section 13** of this bill requires the utility to carry out such a plan. **Section 15** of this bill authorizes the Division of Environmental Protection of the State Department of Conservation and Natural Resources to oversee the decommissioning of surplus electric utility assets. **Section 17** of this bill requires the Governor's Office of Economic Development to assist an electric utility with the marketing of vacant or decommissioned assets for sale and redevelopment.

Existing law requires a person who wishes to construct a utility facility in this State to obtain a permit from the Public Utilities Commission of Nevada. (NRS 704.865) **Section 16.3** of this bill requires an applicant for such a permit to submit a surplus asset retirement plan for the decommissioning, removal, remediation and



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disposition of the utility facility to be followed upon the retirement of the utility facility. **Section 16.7** of this bill requires the Commission to make certain findings and determinations concerning the surplus asset retirement plan before granting such a permit.

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

Section 1. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this act.

Sec. 2. *As used in sections 2 to 13, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Asset” has the meaning ascribed to the term “generation asset” in NRS 704.7575 which contains 50 or more contiguous acres, and of which all real and personal property, including, without limitation, land, structures, equipment and transmission lines and switching stations directly associated with the generation asset, are located wholly or partially within this State.*

Sec. 4. *“Decommissioned” means a surplus asset on which all operations have ceased and which has been cleared and environmentally remediated as necessary and which is ready for sale or disposal.*

Sec. 5. *“Electric utility” means any public utility that is in the business, on lands within this State, as sole owner or co-owner of an asset that provides sales or service of electricity to customers within or outside of this state.*

Sec. 6. *“Operational” means an asset which is actively utilized or operating at full capacity or reduced capacity.*

Sec. 7. *“Post-operational reserve” means an asset which was formerly operational that is currently closed or temporarily out-of-service, and held for future energy generation.*

Sec. 8. *“Pre-operational reserve” means vacant land held for future energy generation or property in planning or under construction for future energy generation and intended for the creation of a future asset.*

Sec. 9. *“Surplus” means an asset that is out-of-service and no longer needed, suitable or reasonably intended to be used to generate electricity.*

Sec. 10. 1. *Each electric utility that is required to file a plan pursuant to NRS 704.741 shall include as part of that plan a list of all assets of the electric utility.*



2. Each electric utility not specified in subsection 1 which holds a permit issued pursuant to NRS 704.870 shall, on or before January 31 of each year, file with the Commission a list of all assets.

3. Each electric utility not specified in subsection 1 or 2 which owns a utility facility, as defined in NRS 704.860, that was permitted by a local authority based on an application filed before July 1, 1971, shall file with the Commission a list of all assets of the electric utility.

4. The list of assets required by subsections 1, 2 and 3 must:

(a) Include a brief description of each asset;

(b) Include the output capacity of each asset;

(c) Classify each asset as operational, pre-operational reserve, post-operational reserve, surplus or decommissioned; and

(d) For each asset classified as pre-operational reserve or post-operational reserve, include a statement in a form approved by the Commission regarding the viability of the future use of the asset for energy generation.

5. Any asset with more than one owner must be included on the list of assets of each owner who is required to file a list pursuant to this section.

Sec. 11. For each asset classified by an electric utility as pre-operational reserve or post-operational reserve pursuant to:

1. Subsection 1 of section 10 of this act, the Commission may, after notice and a hearing pursuant to NRS 704.746, reclassify the asset as surplus if the Commission determines that the asset is no longer used or useful to the customers of the electric utility.

2. Subsection 2 or 3 of section 10 of this act, the Commission may, after notice and a hearing pursuant to NRS 703.320, reclassify the asset as surplus if the Commission determines that the asset is no longer utilized to produce or transmit electricity and that it is not reasonable to expect that the asset will be used to produce or transmit electricity in the future.

Sec. 12. 1. For each asset which has been classified as surplus by an electric utility pursuant to section 10 of this act or reclassified as surplus by the Commission pursuant to section 11 of this act, each electric utility which owns all or part of the asset shall file a surplus asset retirement plan with the Commission within 120 days after the asset has been classified or reclassified as surplus. Such a plan is subject to the approval of the Commission.

2. A surplus asset retirement plan must include:

(a) A brief description of the asset, including without limitation, its generating capacity, its current condition and any details regarding ownership.



(b) A plan for the decommissioning of the site, including without limitation, the closure of any remaining operational activities, any required environmental remediation, the removal and disposal of any physical assets deemed unsuitable for redevelopment and remediation, as determined by the Division of Environmental Protection of the State Department of Conservation and Natural Resources pursuant to NRS 704.7318, or, if decommissioning is underway or completed, a full description of the decommissioning program.

(c) A marketing plan for the sale of the asset, prepared in consultation with the Office of Economic Development, which must disclose any environmental issues or other restrictions and emphasize the value of the asset in its marketplace.

(d) A timeline for implementation of the plan, including without limitation, key dates for completion of benchmarks including a final sale date. To the extent reasonably possible, the timeline must indicate a final sale date that is within 30 months after commencement of the plan.

Sec. 13. Except as otherwise provided in this section, each electric utility that owns all or part of an asset which has been classified as surplus by an electric utility pursuant to section 10 of this act or reclassified as surplus by the Commission pursuant to section 11 of this act shall carry out the surplus asset retirement plan filed pursuant to section 12 of this act. The Commission may, for good cause, extend the projected final sale date or otherwise amend the surplus asset retirement plan.

Sec. 14. (Deleted by amendment.)

Sec. 15. NRS 704.7318 is hereby amended to read as follows:

704.7318 1. To ensure the remediation and, when possible, the reuse of any site used for the production of electricity from a coal-fired electric generating plant, **natural gas electric generating plant or renewable energy facility** in this State, the Division of Environmental Protection of the State Department of Conservation and Natural Resources has exclusive jurisdiction to supervise and regulate the remediation of such sites, including, without limitation, exclusive authority to regulate and supervise the remediation of surface water and groundwater and solid-waste disposal operations located at such a site.

2. The Division of Environmental Protection has exclusive authority to regulate emissions from any electric generating plant constructed on a site previously used for the production of electricity from a coal-fired electric generating plant.

Sec. 15.5. NRS 704.741 is hereby amended to read as follows:

704.741 1. A utility which supplies electricity in this State shall, on or before July 1 of every third year, in the manner specified



1 by the Commission, submit a plan to increase its supply of
2 electricity or decrease the demands made on its system by its
3 customers to the Commission.

4 2. The Commission shall, by regulation:

5 (a) Prescribe the contents of such a plan, including, but not
6 limited to, the methods or formulas which are used by the utility to:

7 (1) Forecast the future demands; and

8 (2) Determine the best combination of sources of supply to
9 meet the demands or the best method to reduce them; and

10 (b) Designate renewable energy zones and revise the designated
11 renewable energy zones as the Commission deems necessary.

12 3. The Commission shall require the utility to include in its
13 plan:

14 (a) An energy efficiency program for residential customers
15 which reduces the consumption of electricity or any fossil fuel and
16 which includes, without limitation, the use of new solar thermal
17 energy sources; ~~and~~

18 (b) A comparison of a diverse set of scenarios of the best
19 combination of sources of supply to meet the demands or the best
20 methods to reduce the demands, which must include at least one
21 scenario of low carbon intensity ~~and~~;

22 (c) *A list of the utility's assets described in section 10 of this*
23 *act; and*

24 (d) *A surplus asset retirement plan as required by section 12 of*
25 *this act.*

26 4. The Commission shall require the utility to include in its
27 plan a plan for construction or expansion of transmission facilities to
28 serve renewable energy zones and to facilitate the utility in meeting
29 the portfolio standard established by NRS 704.7821.

30 5. As used in this section:

31 (a) "Carbon intensity" means the amount of carbon by weight
32 emitted per unit of energy consumed.

33 (b) "Renewable energy zones" means specific geographic zones
34 where renewable energy resources are sufficient to develop
35 generation capacity and where transmission constrains the delivery
36 of electricity from those resources to customers.

37 **Sec. 16.** NRS 704.7588 is hereby amended to read as follows:

38 704.7588 Except as otherwise provided in NRS 704.7311 to
39 704.7322, inclusive, and 704.7591 ~~and~~ *and section 12 of this act:*

40 1. Before July 1, 2003, an electric utility shall not dispose of a
41 generation asset.

42 2. On or after July 1, 2003, an electric utility shall not dispose
43 of a generation asset unless, before the disposal, the Commission
44 approves the disposal by a written order issued in accordance with
45 the provisions of this section.



3. Not sooner than January 1, 2003, an electric utility may file with the Commission an application to dispose of a generation asset on or after July 1, 2003. If an electric utility files such an application, the Commission shall not approve the application unless the Commission finds that the disposal of the generation asset will be in the public interest. The Commission shall issue a written order approving or disapproving the application. The Commission may base its approval of the application upon such terms, conditions or modifications as the Commission deems appropriate.

4. If an electric utility files an application to dispose of a generation asset, the Consumer's Advocate shall be deemed a party of record.

5. If the Commission approves an application to dispose of a generation asset before July 1, 2003, the order of the Commission approving the application:

(a) May not become effective sooner than July 1, 2003;

(b) Does not create any vested rights before the effective date of the order; and

(c) For the purposes of NRS 703.373, shall be deemed a final decision on the date on which the order is issued by the Commission.

Sec. 16.3. NRS 704.870 is hereby amended to read as follows:

704.870 1. Except as otherwise provided in subsection 2, a person who wishes to obtain a permit for a utility facility must file with the Commission an application, in such form as the Commission prescribes, containing:

(a) A description of the location and of the utility facility to be built thereon;

(b) A summary of any studies which have been made of the environmental impact of the facility; ~~and~~

(c) A description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits or detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility ~~;~~ **and**

(d) A surplus asset retirement plan as described in subsection 2 of section 12 of this act for the decommissioning, removal, remediation and disposition of the utility facility after it ceases to operate, including a description of the manner in which the plan will be funded.

➔ A copy or copies of the studies referred to in paragraph (b) must be filed with the Commission and be available for public inspection.

2. If a person wishes to obtain a permit for a utility facility and a federal agency is required to conduct an environmental analysis of the proposed utility facility, the person must:



(a) Not later than the date on which the person files with the appropriate federal agency an application for approval for the construction of the utility facility, file with the Commission and each other permitting entity a notice, in such a form as the Commission or other permitting entity prescribes; and

(b) Not later than 30 days after the issuance by the appropriate federal agency of either the final environmental assessment or final environmental impact statement, but not the record of decision or similar document, relating to the construction of the utility facility:

(1) File with the Commission an application that complies with the provisions of subsection 1; and

(2) File with each other permitting entity an application for a permit, license or other approval for the construction of the utility facility.

3. A copy of each application filed with the Commission must be filed with the Administrator of the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

4. Each application filed with the Commission must be accompanied by:

(a) Proof of service of a copy of the application on the clerk of each local government in the area in which any portion of the facility is to be located, both as primarily and as alternatively proposed; and

(b) Proof that public notice thereof was given to persons residing in the municipalities entitled to receive notice pursuant to paragraph (a) by the publication of a summary of the application in newspapers published and distributed in the area in which the utility facility is proposed to be located.

5. Not later than 5 business days after the Commission receives an application pursuant to this section, the Commission shall issue a notice concerning the application. Any person who wishes to become a party to a permit proceeding pursuant to NRS 704.885 must file with the Commission the appropriate document required by NRS 704.885 within the time frame set forth in the notice issued by the Commission pursuant to this subsection.

Sec. 16.7. NRS 704.890 is hereby amended to read as follows:

704.890 1. Except as otherwise provided in subsection 3, the Commission may not grant a permit for the construction, operation and maintenance of a utility facility, either as proposed or as modified by the Commission, to a person unless it finds and determines:

(a) The nature of the probable effect on the environment;

(b) If the utility facility emits greenhouse gases and does not use renewable energy as its primary source of energy to generate



electricity, the extent to which the facility is needed to ensure reliable utility service to customers in this State;

(c) That the need for the facility balances any adverse effect on the environment;

(d) That the facility represents the minimum adverse effect on the environment, considering the state of available technology and the nature and economics of the various alternatives;

(e) That the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder and the applicant has obtained, or is in the process of obtaining, all other permits, licenses and approvals required by federal, state and local statutes, regulations and ordinances; ~~and~~

(f) *That the surplus asset retirement plan filed pursuant to NRS 704.870:*

(1) Complies with federal, state and local laws;

(2) Provides for the remediation and reuse of the facility within a reasonable period; and

(3) Is able to be reasonably completed under the funding plan contained in the application; and

(g) That the facility will serve the public interest.

2. If the Commission determines that the location of all or a part of the proposed facility should be modified, it may condition its permit upon such a modification. If the applicant has not obtained all the other permits, licenses and approvals required by federal, state and local statutes, regulations and ordinances as of the date on which the Commission decides to issue a permit, the Commission shall condition its permit upon the applicant obtaining those permits and approvals.

3. The requirements set forth in paragraph ~~(f)~~ (g) of subsection 1 do not apply to any application for a permit which is filed by a state government or political subdivision thereof.

4. As used in this section, “renewable energy” has the meaning ascribed to it in NRS 704.7811.

Sec. 17. NRS 231.055 is hereby amended to read as follows:

231.055 Under the direction of the Executive Director, the Office:

1. Shall provide administrative and technical support to the Board.

2. Shall support the efforts of the Board, the regional development authorities designated by the Executive Director pursuant to subsection 4 of NRS 231.053 and the private sector to encourage the creation and expansion of businesses in Nevada and the relocation of businesses to Nevada.

3. Shall coordinate and oversee all economic development programs in this State to ensure that such programs are consistent



1 with the State Plan for Economic Development developed by the
2 Executive Director pursuant to subsection 2 of NRS 231.053,
3 including, without limitation:

4 (a) Coordinating the economic development activities of
5 agencies of this State, local governments in this State and local and
6 regional organizations for economic development to avoid
7 duplication of effort or conflicting efforts;

8 (b) Working with local, state and federal authorities to
9 streamline the process for obtaining abatements, financial
10 incentives, grants, loans and all necessary permits and licenses for
11 the creation or expansion of businesses in Nevada or the relocation
12 of businesses to Nevada; and

13 (c) Reviewing, analyzing and making recommendations for the
14 approval or disapproval of applications for abatements, financial
15 incentives, development resources, and grants and loans of money
16 provided by the Office.

17 4. *Shall, upon request, assist an electric utility with the*
18 *marketing of vacant or decommissioned assets for sale and*
19 *redevelopment pursuant to section 12 of this act.*

20 5. May:

21 (a) Participate in any federal programs for economic
22 development that are consistent with the State Plan for Economic
23 Development developed by the Executive Director pursuant to
24 subsection 2 of NRS 231.053; and

25 (b) When practicable and authorized by federal law, act as the
26 agency of this State to administer such federal programs.

