

SENATE BILL NO. 336—SENATOR HARDY

MARCH 20, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Imposes a tax on wholesale sales of electricity generated from renewable energy. (BDR 58-962)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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; imposing a tax on the sale of electricity generated from renewable energy and produced or delivered into this State for resale to the public; requiring the Department of Taxation, in cooperation with the Office of Energy and the Public Utilities Commission of Nevada, to develop a system for determining the amount of the tax and for the imposition and collection of the tax; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 This bill generally provides for the imposition of a tax on wholesale sales of
2 electricity generated from renewable energy and produced or delivered in this State
3 to public utilities, cities, counties or other entities for resale to the public. **Section 4**
4 of this bill imposes the tax and requires the Department of Taxation, in cooperation
5 with the Office of Energy and the Public Utilities Commission of Nevada, to adopt
6 regulations providing for a system which must be used to determine the amount of
7 the tax and which must provide for different rates of the tax based upon the total
8 annual amount of electricity produced and sold by the person upon whom the tax is
9 imposed. **Sections 1 and 2** of this bill require the Office of Energy and the
10 Commission, respectively, to cooperate with the Department in the development of
11 such a system. **Sections 5-18** of this bill provide for the administration of the tax
12 imposed pursuant to **section 4**.



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

Section 1. Chapter 701 of NRS is hereby amended by adding thereto a new section to read as follows:

The Office of Energy shall cooperate with the Department of Taxation and the Public Utilities Commission of Nevada to develop the system for the determination of the amount and the imposition and collection of the tax imposed by section 4 of this act.

Sec. 2. Chapter 703 of NRS is hereby amended by adding thereto a new section to read as follows:

The Commission shall cooperate with the Department of Taxation and the Office of Energy to develop the system for the determination of the amount and the imposition and collection of the tax imposed by section 4 of this act.

Sec. 3. Title 32 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 4 to 18, inclusive, of this act.

Sec. 4. 1. *In addition to any other tax, fee or other charge imposed for the production or sale of electricity, there is hereby imposed a tax on each person engaged in the production of electricity generated from renewable energy resources for delivery in this State to a public utility, city, county or other entity which is reselling the electricity to the public. The Department shall impose and collect the tax in the manner prescribed by this chapter.*

2. *To determine the amount of the tax imposed on any person pursuant to subsection 1, the Department shall, by regulation, develop a system which must provide for different rates of the tax based upon the total annual amount of electricity generated from renewable energy produced and sold by the person upon whom the tax is imposed. The Department shall consult with the Office of Energy and the Public Utilities Commission of Nevada in adopting regulations prescribing the system for the imposition and collection of the tax imposed by subsection 1.*

3. *The tax collected by the Department pursuant to subsection 1 must be deposited with the State Treasurer in accordance with the provisions of section 9 of this act.*

4. *As used in this section, the term "renewable energy" has the meaning ascribed to it in NRS 701.070.*

Sec. 5. *In addition to the regulations which the Department is required to adopt pursuant to subsection 2 of section 4 of this act, the Department shall adopt all necessary regulations to carry out the provisions of this chapter.*



1 **Sec. 6.** *The provisions of chapter 360 of NRS relating to the*
2 *payment, collection, administration and enforcement of taxes,*
3 *including, without limitation, any provisions relating to the*
4 *imposition of penalties and interest, shall be deemed to apply to*
5 *the payment, collection, administration and enforcement of the tax*
6 *imposed by section 4 of this act to the extent that those provisions*
7 *do not conflict with the provisions of this chapter.*

8 **Sec. 7.** 1. *Each person responsible for maintaining the*
9 *records of a taxpayer shall:*

10 (a) *Keep such records as may be necessary to determine the*
11 *amount of the liability of the taxpayer pursuant to the provisions*
12 *of section 4 of this act;*

13 (b) *Preserve those records for 4 years or until any litigation or*
14 *prosecution pursuant to this chapter is finally determined,*
15 *whichever is longer; and*

16 (c) *Make the records available for inspection by the*
17 *Department upon demand at reasonable times during regular*
18 *business hours.*

19 2. *Any person who violates the provisions of subsection 1 is*
20 *guilty of a misdemeanor.*

21 **Sec. 8.** *To verify the accuracy of any return filed by a*
22 *taxpayer or, if no return is filed, to determine the amount required*
23 *to be paid, the Department, or any person authorized in writing by*
24 *the Department, may examine the books, papers and records of*
25 *any person who may be liable for the tax imposed by section 4 of*
26 *this act.*

27 **Sec. 9.** *The State Treasurer shall deposit any money the State*
28 *Treasurer receives from the Department pursuant to section 4 of*
29 *this act for credit to the State General Fund.*

30 **Sec. 10.** *If the Department determines that any of the tax*
31 *imposed by section 4 of this act or any penalty or interest has been*
32 *paid more than once or has been erroneously or illegally collected*
33 *or computed, the Department shall set forth that fact in the*
34 *records of the Department and certify to the State Board of*
35 *Examiners the amount collected in excess of the amount legally*
36 *due and the person from whom it was collected or by whom it was*
37 *paid. If approved by the State Board of Examiners, the excess*
38 *amount collected or paid must, after being credited against any*
39 *amount then due from the person in accordance with NRS*
40 *360.236, be refunded to the person or his or her successors in*
41 *interest.*

42 **Sec. 11.** 1. *Except as otherwise provided in NRS 360.235*
43 *and 360.395:*

44 (a) *No refund of any of the tax imposed by section 4 of this act*
45 *may be allowed unless a claim for refund is filed with the*



1 *Department within 3 years after the last day of the month*
2 *following the month for which the overpayment was made.*

3 *(b) No credit may be allowed after the expiration of the period*
4 *specified for filing claims for refund unless a claim for credit is*
5 *filed with the Department within that period.*

6 *2. Each claim must be in writing and must state the specific*
7 *grounds upon which the claim is founded.*

8 *3. The failure to file a claim within the time prescribed in*
9 *subsection 1 constitutes a waiver of any demand against the State*
10 *on account of any overpayment.*

11 **Sec. 12.** *1. Except as otherwise provided in subsection 2,*
12 *NRS 360.320 or any other specific statute, interest must be paid*
13 *upon any overpayment of the tax imposed by section 4 of this act*
14 *at the rate set forth in, and in accordance with the provisions of,*
15 *NRS 360.2937.*

16 *2. If the Department determines that any overpayment has*
17 *been made intentionally or by reason of carelessness, the*
18 *Department shall not allow any interest on the overpayment.*

19 **Sec. 13.** *1. Within 30 days after rejecting a claim for refund*
20 *or credit in whole or in part, the Department shall serve written*
21 *notice of its action on the claimant in the manner prescribed for*
22 *service of a notice of deficiency determination. Within 30 days*
23 *after the date of service of the notice, a claimant who is aggrieved*
24 *by the action of the Department may file an appeal with the*
25 *Nevada Tax Commission.*

26 *2. If the Department fails to serve notice of its action on a*
27 *claim for refund or credit within 6 months after the claim is filed,*
28 *the claimant may consider the claim to be disallowed and file an*
29 *appeal with the Nevada Tax Commission within 30 days after the*
30 *last day of the 6-month period.*

31 *3. The final decision of the Nevada Tax Commission on an*
32 *appeal is a final decision for the purposes of judicial review*
33 *pursuant to chapter 233B of NRS.*

34 **Sec. 14.** *1. A proceeding for judicial review of a decision of*
35 *the Nevada Tax Commission may not be commenced or*
36 *maintained by an assignee of the claimant or by any other person*
37 *other than the person who paid the amount at issue in the claim.*

38 *2. The failure of a claimant to file a timely petition for*
39 *judicial review constitutes a waiver of any demand against the*
40 *State on account of any overpayment.*

41 **Sec. 15.** *1. If judgment is rendered for the claimant in a*
42 *proceeding for judicial review, any amount found by the court to*
43 *have been erroneously or illegally collected must first be credited*
44 *to any tax due from the claimant. The balance of the amount must*
45 *be refunded to the claimant.*



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2. *In any such judgment, interest must be allowed at the rate of 3 percent per annum upon any amount found to have been erroneously or illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days. The date must be determined by the Department.*

Sec. 16. *1. No injunction, writ of mandate or other legal or equitable process may issue in any suit, action or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection of the tax imposed by section 4 of this act or any amount of tax, penalty or interest required to be collected.*

2. No suit or proceeding, including, without limitation, a proceeding for judicial review, may be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been filed within the time prescribed in section 11 of this act.

Sec. 17. *1. A person shall not, with intent to defraud the State or evade payment of the tax imposed by section 4 of this act or any part of the tax:*

(a) Make, cause to be made or permit to be made any false or fraudulent return or declaration or false statement in any return or declaration.

(b) Make, cause to be made or permit to be made any false entry in books, records or accounts.

(c) Keep, cause to be kept or permit to be kept more than one set of books, records or accounts.

2. Any person who violates the provisions of subsection 1 is guilty of a gross misdemeanor.

Sec. 18. *The remedies of the State provided for in this chapter are cumulative, and no action taken by the Department or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in those sections.*

Sec. 19. This act becomes effective on July 1, 2017.

