

ASSEMBLY BILL NO. 386—ASSEMBLYMAN OHRENSCHALL

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to systems for obtaining solar energy and systems for obtaining wind energy. (BDR 22-880)

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; prohibiting a governing body from adopting any ordinance, regulation or plan or taking any other action concerning certain renewable energy projects; prohibiting a governing body from adopting any ordinance, regulation or plan that unreasonably restricts the use of a system for obtaining wind energy or a system for obtaining solar energy under certain circumstances; providing that a system for obtaining wind energy does not constitute a nuisance under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes local governing bodies to adopt zoning and building
2 codes and regulations governing the construction, maintenance and safety of all
3 buildings and structures within their respective jurisdictions. (NRS 244.3675,
4 268.413, 278.250, 278.580) That authority is subject to requirements that zoning
5 regulations promote and permit systems which use solar or wind energy and subject
6 to certain limits on the restrictions that the governing bodies can impose on such
7 systems. (NRS 278.02077, 278.0208, 278.250, 278.580) Existing law also limits
8 the restrictions that a covenant or condition in a deed, contract or other legal
9 instrument affecting the transfer of real property can impose on such systems. (NRS
10 278.02077, 278.0208)

11 **Section 1** of this bill prohibits a local governing body from adopting an
12 ordinance, regulation or plan that prohibits or unreasonably restricts a renewable
13 energy generation project or utility project that has undergone certain state or
14 federal review. **Sections 3, 4, 11 and 12** of this bill provide that the restrictions that
15 a governing body and an instrument that transfers real property can impose on a
16 system which uses solar or wind energy apply to any user of such a system,
17 regardless of whether the system is on property owned or leased by the user.



18 **Sections 3, 5, 9 and 12** of this bill also provide specifications for a system for
19 obtaining wind energy that can be restricted by a governing body or by an
20 instrument that transfers real property.

21 Additionally, existing law authorizes the governing bodies of counties, cities
22 and towns to regulate, control and prohibit nuisances, including excessive noise,
23 and provides for a private right of action to abate a nuisance. (NRS 40.140,
24 202.450, 244.363, 266.335, 268.412, 269.205) **Sections 10 and 15-19** of this bill
25 provide that, as long as a system for obtaining wind energy is in compliance with
26 applicable laws relating to height, appearance and noise, the system is not
27 considered a public nuisance with respect to height, appearance or noise for the
28 purpose of local government action or private rights of action.

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

1 **Section 1.** Chapter 278 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *A governing body shall not adopt an ordinance, regulation or*
4 *plan or take any other action that prohibits or unreasonably*
5 *restricts or has the effect of prohibiting or unreasonably*
6 *restricting a person from constructing or using a renewable*
7 *energy generation project or a utility project if:*

8 *1. The person has obtained a permit to construct the*
9 *renewable energy generation project or utility project as a utility*
10 *facility pursuant to NRS 704.865; or*

11 *2. The renewable energy generation project or utility project*
12 *is subject to the provisions of the National Environmental Policy*
13 *Act of 1969, 42 U.S.C. §§ 4321 et seq.*

14 **Sec. 2.** NRS 278.010 is hereby amended to read as follows:

15 278.010 As used in NRS 278.010 to 278.630, inclusive, *and*
16 *section 1 of this act*, unless the context otherwise requires, the
17 words and terms defined in NRS 278.0105 to 278.0195, inclusive,
18 have the meanings ascribed to them in those sections.

19 **Sec. 3.** NRS 278.02077 is hereby amended to read as follows:

20 278.02077 1. Except as otherwise provided in subsection 2:

21 (a) A governing body shall not adopt an ordinance, regulation or
22 plan or take any other action that prohibits or unreasonably restricts
23 ~~[the owner of real property]~~ *a person* from using a system for
24 obtaining wind energy on ~~[his or her]~~ property ~~[.]~~ *owned or leased*
25 *by the person.*

26 (b) Any covenant, restriction or condition contained in a deed,
27 contract or other legal instrument which affects the transfer or sale of,
28 or any other interest in, real property and which prohibits or
29 unreasonably restricts ~~[the owner of the property]~~ *a person* from
30 using a system for obtaining wind energy on ~~[his or her]~~ property
31 *owned or leased by the person* is void and unenforceable.



1 2. The provisions of subsection 1 do not prohibit a reasonable
2 restriction or requirement:

3 (a) Imposed pursuant to a determination by the Federal Aviation
4 Administration that the installation of the system for obtaining wind
5 energy would create a hazard to air navigation; or

6 (b) Relating to the height, noise or safety of a system for
7 obtaining wind energy ~~[-] that:~~

8 (I) *Is more than:*

9 (I) *Seventy-five feet tall if the system is on a parcel that*
10 *is less than 5 acres; or*

11 (II) *One hundred feet tall if the system is on a parcel*
12 *that is at least 5 acres;*

13 (2) *Exceeds 55 A-weighted decibels measured from*
14 *adjoining property; or*

15 (3) *Has not been certified by a professional engineer who is*
16 *licensed pursuant to the provisions of chapter 625 of NRS and*
17 *who designs buildings as a discipline for which he or she is*
18 *qualified pursuant to that chapter.*

19 3. For the purposes of this section, “unreasonably restricts ~~the~~
20 ~~owner of the property] a person~~ from using a system for obtaining
21 wind energy” includes the placing of a restriction or requirement on
22 the use of a system for obtaining wind energy which significantly
23 decreases the efficiency or performance of the system and which
24 does not allow for the use of an alternative system at a substantially
25 comparable cost and with substantially comparable efficiency and
26 performance.

27 **Sec. 4.** NRS 278.0208 is hereby amended to read as follows:

28 278.0208 1. A governing body shall not adopt an ordinance,
29 regulation or plan or take any other action that prohibits or
30 unreasonably restricts or has the effect of prohibiting or
31 unreasonably restricting ~~the owner of real property] a person~~ from
32 using a system for obtaining solar energy on ~~his or her] property [-]~~
33 *owned or leased by the person.*

34 2. Any covenant, restriction or condition contained in a deed,
35 contract or other legal instrument which affects the transfer or sale of,
36 or any other interest in, real property and which prohibits or
37 unreasonably restricts or has the effect of prohibiting or
38 unreasonably restricting ~~the owner of the property] a person~~ from
39 using a system for obtaining solar energy on ~~his or her] property~~
40 *owned or leased by the person* is void and unenforceable.

41 3. For the purposes of this section, the following shall be
42 deemed to be unreasonable restrictions:

43 (a) The placing of a restriction or requirement on the use of a
44 system for obtaining solar energy which decreases the efficiency or
45 performance of the system by more than 10 percent of the amount



1 that was originally specified for the system, as determined by the
2 Director of the Office of Energy, and which does not allow for the
3 use of an alternative system at a substantially comparable cost and
4 with substantially comparable efficiency and performance.

5 (b) The prohibition of a system for obtaining solar energy that
6 uses components painted with black solar glazing.

7 **Sec. 5.** NRS 278.250 is hereby amended to read as follows:

8 278.250 1. For the purposes of NRS 278.010 to 278.630,
9 inclusive, *and section 1 of this act*, the governing body may divide
10 the city, county or region into zoning districts of such number, shape
11 and area as are best suited to carry out the purposes of NRS 278.010
12 to 278.630, inclusive ~~§~~ , *and section 1 of this act*. Within the
13 zoning district, it may regulate and restrict the erection,
14 construction, reconstruction, alteration, repair or use of buildings,
15 structures or land.

16 2. The zoning regulations must be adopted in accordance with
17 the master plan for land use and be designed:

18 (a) To preserve the quality of air and water resources.

19 (b) To promote the conservation of open space and the
20 protection of other natural and scenic resources from unreasonable
21 impairment.

22 (c) To consider existing views and access to solar resources by
23 studying the height of new buildings which will cast shadows on
24 surrounding residential and commercial developments.

25 (d) To reduce the consumption of energy by encouraging the use
26 of products and materials which maximize energy efficiency in the
27 construction of buildings.

28 (e) To provide for recreational needs.

29 (f) To protect life and property in areas subject to floods,
30 landslides and other natural disasters.

31 (g) To conform to the adopted population plan, if required by
32 NRS 278.170.

33 (h) To develop a timely, orderly and efficient arrangement of
34 transportation and public facilities and services, including public
35 access and sidewalks for pedestrians, and facilities and services for
36 bicycles.

37 (i) To ensure that the development on land is commensurate
38 with the character and the physical limitations of the land.

39 (j) To take into account the immediate and long-range financial
40 impact of the application of particular land to particular kinds of
41 development, and the relative suitability of the land for
42 development.

43 (k) To promote health and the general welfare.



1 (l) To ensure the development of an adequate supply of housing
2 for the community, including the development of affordable
3 housing.

4 (m) To ensure the protection of existing neighborhoods and
5 communities, including the protection of rural preservation
6 neighborhoods and, in counties whose population is 400,000 or
7 more, the protection of historic neighborhoods.

8 (n) ~~[(f)]~~ *Subject to the provisions of NRS 278.02077 and*
9 *278.0208, to* promote systems which use solar or wind energy.

10 (o) To foster the coordination and compatibility of land uses
11 with any military installation in the city, county or region, taking
12 into account the location, purpose and stated mission of the military
13 installation.

14 3. The zoning regulations must be adopted with reasonable
15 consideration, among other things, to the character of the area and
16 its peculiar suitability for particular uses, and with a view to
17 conserving the value of buildings and encouraging the most
18 appropriate use of land throughout the city, county or region.

19 4. In exercising the powers granted in this section, the
20 governing body may use any controls relating to land use or
21 principles of zoning that the governing body determines to be
22 appropriate, including, without limitation, density bonuses,
23 inclusionary zoning and minimum density zoning.

24 5. As used in this section:

25 (a) "Density bonus" means an incentive granted by a governing
26 body to a developer of real property that authorizes the developer to
27 build at a greater density than would otherwise be allowed under the
28 master plan, in exchange for an agreement by the developer to
29 perform certain functions that the governing body determines to be
30 socially desirable, including, without limitation, developing an area
31 to include a certain proportion of affordable housing.

32 (b) "Inclusionary zoning" means a type of zoning pursuant to
33 which a governing body requires or provides incentives to a
34 developer who builds residential dwellings to build a certain
35 percentage of those dwellings as affordable housing.

36 (c) "Minimum density zoning" means a type of zoning pursuant
37 to which development must be carried out at or above a certain
38 density to maintain conformance with the master plan.

39 **Sec. 6.** NRS 278.320 is hereby amended to read as follows:

40 278.320 1. "Subdivision" means any land, vacant or
41 improved, which is divided or proposed to be divided into five or
42 more lots, parcels, sites, units or plots, for the purpose of any
43 transfer or development, or any proposed transfer or development,
44 unless exempted by one of the following provisions:



1 (a) The term “subdivision” does not apply to any division of
2 land which is subject to the provisions of NRS 278.471 to 278.4725,
3 inclusive.

4 (b) Any joint tenancy or tenancy in common shall be deemed a
5 single interest in land.

6 (c) Unless a method of disposition is adopted for the purpose of
7 evading this chapter or would have the effect of evading this
8 chapter, the term “subdivision” does not apply to:

9 (1) Any division of land which is ordered by any court in this
10 State or created by operation of law;

11 (2) A lien, mortgage, deed of trust or any other security
12 instrument;

13 (3) A security or unit of interest in any investment trust
14 regulated under the laws of this State or any other interest in an
15 investment entity;

16 (4) Cemetery lots; or

17 (5) An interest in oil, gas, minerals or building materials,
18 which are now or hereafter severed from the surface ownership of
19 real property.

20 2. A common-interest community consisting of five or more
21 units shall be deemed to be a subdivision of land within the meaning
22 of this section, but need only comply with NRS 278.326 to 278.460,
23 inclusive, and 278.473 to 278.490, inclusive.

24 3. The board of county commissioners of any county may
25 exempt any parcel or parcels of land from the provisions of NRS
26 278.010 to 278.630, inclusive, *and section 1 of this act* if:

27 (a) The land is owned by a railroad company or by a nonprofit
28 corporation organized and existing pursuant to the provisions of
29 chapter 81 or 82 of NRS which is an immediate successor in title to
30 a railroad company, and the land was in the past used in connection
31 with any railroad operation; and

32 (b) Other persons now permanently reside on the land.

33 4. Except as otherwise provided in subsection 5, this chapter,
34 including, without limitation, any requirements relating to the
35 adjustment of boundary lines or the filing of a parcel map or record
36 of survey, does not apply to the division, exchange or transfer of
37 land for agricultural purposes if each parcel resulting from such a
38 division, exchange or transfer:

39 (a) Is 10 acres or more in size, unless local zoning laws require a
40 larger minimum parcel size, in which case each parcel resulting
41 from the division, exchange or transfer must comply with the parcel
42 size required by those local zoning laws;

43 (b) Has a zoning classification that is consistent with the
44 designation in the master plan, if any, regarding land use for the
45 parcel;



1 (c) Can be described by reference to the standard subdivisions
2 used in the United States Public Land Survey System;

3 (d) Qualifies for agricultural use assessment under NRS
4 361A.100 to 361A.160, inclusive, and any regulations adopted
5 pursuant thereto; and

6 (e) Is accessible:

7 (1) By way of an existing street, road or highway;

8 (2) Through other adjacent lands owned by the same person;

9 or

10 (3) By way of an easement for agricultural purposes that was
11 granted in connection with the division, exchange or transfer.

12 5. The exemption from the provisions of this chapter, which
13 exemption is set forth in subsection 4, does not apply with respect to
14 any parcel resulting from the division, exchange or transfer of
15 agricultural lands if:

16 (a) Such resulting parcel ceases to qualify for agricultural use
17 assessment under NRS 361A.100 to 361A.160, inclusive, and any
18 regulations adopted pursuant thereto; or

19 (b) New commercial buildings or residential dwelling units are
20 proposed to be constructed on the parcel after the date on which the
21 division, exchange or transfer took place. The provisions of this
22 paragraph do not prohibit the expansion, repair, reconstruction,
23 renovation or replacement of preexisting buildings or dwelling units
24 that are:

25 (1) Dilapidated;

26 (2) Dangerous;

27 (3) At risk of being declared a public nuisance;

28 (4) Damaged or destroyed by fire, flood, earthquake or any
29 natural or human-caused disaster; or

30 (5) Otherwise in need of expansion, repair, reconstruction,
31 renovation or replacement.

32 **Sec. 7.** NRS 278.325 is hereby amended to read as follows:

33 278.325 1. If a subdivision is proposed on land which is
34 zoned for industrial or commercial development, neither the
35 tentative nor the final map need show any division of the land into
36 lots or parcels, but the streets and any other required improvements
37 are subject to the requirements of NRS 278.010 to 278.630,
38 inclusive **H**, and **section 1 of this act**.

39 2. No parcel of land may be sold for residential use from a
40 subdivision whose final map does not show a division of the land
41 into lots.

42 3. Except as otherwise provided in subsection 4, a boundary or
43 line must not be created by a conveyance of a parcel from an
44 industrial or commercial subdivision unless a professional land
45 surveyor has surveyed the boundary or line and set the monuments.



1 The surveyor shall file a record of the survey pursuant to the
2 requirements set forth in NRS 625.340. Any conveyance of such a
3 parcel must contain a legal description of the parcel that is
4 independent of the record of survey.

5 4. The provisions of subsection 3 do not apply to a boundary or
6 line that is created entirely within an existing industrial or
7 commercial building. A certificate prepared by a professional
8 engineer or registered architect certifying compliance with the
9 applicable law of this State in effect at the time of the preparation of
10 the certificate and with the building code in effect at the time the
11 building was constructed must be attached to any document which
12 proposes to subdivide such a building.

13 5. A certificate prepared pursuant to subsection 4 for a building
14 located in a county whose population is 400,000 or more must be
15 reviewed, approved and signed by the building official having
16 jurisdiction over the area within which the building is situated.

17 **Sec. 8.** NRS 278.326 is hereby amended to read as follows:

18 278.326 1. Local subdivision ordinances shall be enacted by
19 the governing body of every incorporated city and every county,
20 prescribing regulations which, in addition to the provisions of NRS
21 278.010 to 278.630, inclusive, *and section 1 of this act*, govern
22 matters of improvements, mapping, accuracy, engineering and
23 related subjects, but shall not be in conflict with NRS 278.010 to
24 278.630, inclusive ~~and~~, *and section 1 of this act*.

25 2. The subdivider shall comply with the provisions of the
26 appropriate local ordinance before the final map is approved.

27 **Sec. 9.** NRS 278.580 is hereby amended to read as follows:

28 278.580 1. Subject to the limitation set forth in NRS 244.368,
29 the governing body of any city or county may adopt a building code,
30 specifying the design, soundness and materials of structures, and
31 may adopt rules, ordinances and regulations for the enforcement of
32 the building code.

33 2. The governing body may also fix a reasonable schedule of
34 fees for the issuance of building permits. A schedule of fees so fixed
35 does not apply to the State of Nevada or the Nevada System of
36 Higher Education, except that such entities may enter into a contract
37 with the governing body to pay such fees for the issuance of
38 building permits, the review of plans and the inspection of
39 construction. Except as it may agree to in such a contract, a
40 governing body is not required to provide for the review of plans or
41 the inspection of construction with respect to a structure of the State
42 of Nevada or the Nevada System of Higher Education.

43 3. Notwithstanding any other provision of law, the State and its
44 political subdivisions shall comply with all zoning regulations



1 adopted pursuant to this chapter, except for the expansion of any
2 activity existing on April 23, 1971.

3 4. ~~[A]~~ *Subject to the provisions of NRS 278.02077 and*
4 *278.0208, a* governing body shall amend its building codes and, if
5 necessary, its zoning ordinances and regulations to permit the use
6 of:

7 (a) Straw or other materials and technologies which conserve
8 scarce natural resources or resources that are renewable in the
9 construction of a structure; and

10 (b) Systems which use solar or wind energy to reduce the costs
11 of energy for a structure if such systems and structures are otherwise
12 in compliance with applicable building codes and zoning
13 ordinances, including those relating to the design, location and
14 soundness of such systems and structures,

15 ➔ to the extent the local climate allows for the use of such
16 materials, technologies, resources and systems.

17 5. The amendments required by subsection 4 may address,
18 without limitation:

19 (a) The inclusion of characteristics of land and structures that
20 are most appropriate for the construction and use of systems using
21 solar and wind energy.

22 (b) The recognition of any impediments to the development of
23 systems using solar and wind energy.

24 (c) The preparation of design standards for the construction,
25 conversion or rehabilitation of new and existing systems using solar
26 and wind energy.

27 6. A governing body shall amend its building codes to include:

28 (a) The seismic provisions of the International Building Code
29 published by the International Code Council; and

30 (b) Standards for the investigation of hazards relating to seismic
31 activity, including, without limitation, potential surface ruptures and
32 liquefaction.

33 **Sec. 10.** NRS 40.140 is hereby amended to read as follows:

34 40.140 1. Except as otherwise provided in this section:

35 (a) Anything which is injurious to health, or indecent and
36 offensive to the senses, or an obstruction to the free use of property,
37 so as to interfere with the comfortable enjoyment of life or property;

38 (b) A building or place used for the purpose of unlawfully
39 selling, serving, storing, keeping, manufacturing, using or giving
40 away a controlled substance, immediate precursor or controlled
41 substance analog;

42 (c) A building or place which was used for the purpose of
43 unlawfully manufacturing a controlled substance, immediate
44 precursor or controlled substance analog and:



1 (1) Which has not been deemed safe for habitation by the
2 board of health; or

3 (2) From which all materials or substances involving the
4 controlled substance, immediate precursor or controlled substance
5 analog have not been removed or remediated by an entity certified
6 or licensed to do so within 180 days after the building or place is no
7 longer used for the purpose of unlawfully manufacturing a
8 controlled substance, immediate precursor or controlled substance
9 analog; or

10 (d) A building or place regularly and continuously used by the
11 members of a criminal gang to engage in, or facilitate the
12 commission of, crimes by the criminal gang,

13 ➔ is a nuisance, and the subject of an action. The action may be
14 brought by any person whose property is injuriously affected, or
15 whose personal enjoyment is lessened by the nuisance, and by the
16 judgment the nuisance may be enjoined or abated, as well as
17 damages recovered.

18 2. It is presumed:

19 (a) That an agricultural activity conducted on farmland,
20 consistent with good agricultural practice and established before
21 surrounding nonagricultural activities is reasonable. Such activity
22 does not constitute a nuisance unless the activity has a substantial
23 adverse effect on the public health or safety.

24 (b) That an agricultural activity which does not violate a federal,
25 state or local law, ordinance or regulation constitutes good
26 agricultural practice.

27 3. A shooting range does not constitute a nuisance with respect
28 to any noise attributable to the shooting range if the shooting range
29 is in compliance with the provisions of all applicable statutes,
30 ordinances and regulations concerning noise:

31 (a) As those provisions existed on October 1, 1997, for a
32 shooting range in operation on or before October 1, 1997; or

33 (b) As those provisions exist on the date that the shooting range
34 begins operation, for a shooting range that begins operation after
35 October 1, 1997.

36 ➔ A shooting range is not subject to any state or local law related to
37 the control of noise that is adopted or amended after the date set
38 forth in paragraph (a) or (b), as applicable, and does not constitute a
39 nuisance for failure to comply with any such law.

40 4. *A system for obtaining wind energy does not constitute a*
41 *nuisance with respect to the height or appearance of the system or*
42 *any noise attributable to the system if, on the date a permit or*
43 *other authorization is issued for the system or on the date any*
44 *construction or installation of the system begins, the system is in*
45 *compliance with the provisions of all applicable statutes,*



1 *ordinances and regulations concerning the height or appearance*
2 *of a system or noise attributable to the system.*

3 5. As used in this section:

4 (a) "Board of health" has the meaning ascribed to it in
5 NRS 439.4797.

6 (b) "Controlled substance analog" has the meaning ascribed to it
7 in NRS 453.043.

8 (c) "Criminal gang" has the meaning ascribed to it in
9 NRS 193.168.

10 (d) "Immediate precursor" has the meaning ascribed to it in
11 NRS 453.086.

12 (e) "Shooting range" means an area designed and used for
13 archery or sport shooting, including, but not limited to, sport
14 shooting that involves the use of rifles, shotguns, pistols, silhouettes,
15 skeet, trap, black powder or other similar items.

16 **Sec. 11.** NRS 111.239 is hereby amended to read as follows:

17 111.239 1. Any covenant, restriction or condition contained
18 in a deed, contract or other legal instrument which affects the
19 transfer or sale of, or any other interest in, real property and which
20 prohibits or unreasonably restricts or has the effect of prohibiting or
21 unreasonably restricting ~~[the owner of the property]~~ *a person* from
22 using a system for obtaining solar energy on ~~[his or her]~~ property
23 *owned or leased by the person* is void and unenforceable.

24 2. For the purposes of this section, the following shall be
25 deemed to be unreasonable restrictions:

26 (a) The placing of a restriction or requirement on the use of a
27 system for obtaining solar energy which decreases the efficiency or
28 performance of the system by more than 10 percent of the amount
29 that was originally specified for the system, as determined by the
30 Director of the Office of Energy, and which does not allow for the
31 use of an alternative system at a substantially comparable cost and
32 with substantially comparable efficiency and performance.

33 (b) The prohibition of a system for obtaining solar energy that
34 uses components painted with black solar glazing.

35 **Sec. 12.** NRS 111.2395 is hereby amended to read as follows:

36 111.2395 1. Except as otherwise provided in subsection 2,
37 any covenant, restriction or condition contained in a deed, contract
38 or other legal instrument which affects the transfer or sale of, or any
39 other interest in, real property and which prohibits or unreasonably
40 restricts ~~[the owner of the property]~~ *a person* from using a system
41 for obtaining wind energy on ~~[his or her]~~ property *owned or leased*
42 *by the person* is void and unenforceable.

43 2. The provisions of subsection 1 do not prohibit a reasonable
44 restriction or requirement:



1 (a) Imposed pursuant to a determination by the Federal Aviation
2 Administration that the installation of the system for obtaining wind
3 energy would create a hazard to air navigation; or

4 (b) Relating to the height, noise or safety of a system for
5 obtaining wind energy ~~that~~ **that:**

6 (1) *Is more than:*

7 (I) *Seventy-five feet tall if the system is on a parcel that*
8 *is less than 5 acres; or*

9 (II) *One hundred feet tall if the system is on a parcel*
10 *that is at least 5 acres;*

11 (2) *Exceeds 55 A-weighted decibels measured from*
12 *adjoining property; or*

13 (3) *Has not been certified by a professional engineer who is*
14 *licensed pursuant to the provisions of chapter 625 of NRS and*
15 *who designs buildings as a discipline for which he or she is*
16 *qualified pursuant to that chapter.*

17 3. For the purposes of this section, “unreasonably restricts ~~the~~
18 ~~owner of the property~~ **a person** from using a system for obtaining
19 wind energy” includes the placing of a restriction or requirement on
20 the use of a system for obtaining wind energy which significantly
21 decreases the efficiency or performance of the system and which
22 does not allow for the use of an alternative system at a substantially
23 comparable cost and with substantially comparable efficiency and
24 performance.

25 **Sec. 13.** NRS 119.128 is hereby amended to read as follows:

26 119.128 An exemption pursuant to this chapter is not an
27 exemption from the provisions of NRS 278.010 to 278.630,
28 inclusive ~~that~~, **and section 1 of this act.**

29 **Sec. 14.** NRS 119.340 is hereby amended to read as follows:

30 119.340 The provisions of this chapter are in addition to and
31 not a substitute for NRS 278.010 to 278.630, inclusive ~~that~~, **and**
32 **section 1 of this act.**

33 **Sec. 15.** NRS 202.450 is hereby amended to read as follows:

34 202.450 1. A public nuisance is a crime against the order and
35 economy of the State.

36 2. Every place:

37 (a) Wherein any gambling, bookmaking or pool selling is
38 conducted without a license as provided by law, or wherein any
39 swindling game or device, or bucket shop, or any agency therefor is
40 conducted, or any article, apparatus or device useful therefor is kept;

41 (b) Wherein any fighting between animals or birds is conducted;

42 (c) Wherein any dog races are conducted as a gaming activity;

43 (d) Wherein any intoxicating liquors are kept for unlawful use,
44 sale or distribution;



1 (e) Wherein a controlled substance, immediate precursor or
2 controlled substance analog is unlawfully sold, served, stored, kept,
3 manufactured, used or given away;

4 (f) That is regularly and continuously used by the members of a
5 criminal gang to engage in, or facilitate the commission of, crimes
6 by the criminal gang; or

7 (g) Where vagrants resort,
8 ↪ is a public nuisance.

9 3. Every act unlawfully done and every omission to perform a
10 duty, which act or omission:

11 (a) Annoys, injures or endangers the safety, health, comfort or
12 repose of any considerable number of persons;

13 (b) Offends public decency;

14 (c) Unlawfully interferes with, befouls, obstructs or tends to
15 obstruct, or renders dangerous for passage, a lake, navigable river,
16 bay, stream, canal, ditch, millrace or basin, or a public park, square,
17 street, alley, bridge, causeway or highway; or

18 (d) In any way renders a considerable number of persons
19 insecure in life or the use of property,

20 ↪ is a public nuisance.

21 4. A building or place which was used for the purpose of
22 unlawfully manufacturing a controlled substance, immediate
23 precursor or controlled substance analog is a public nuisance if the
24 building or place has not been deemed safe for habitation by the
25 board of health and:

26 (a) The owner of the building or place allows the building or
27 place to be used for any purpose before all materials or substances
28 involving the controlled substance, immediate precursor or
29 controlled substance analog have been removed from or remediated
30 on the building or place by an entity certified or licensed to do so; or

31 (b) The owner of the building or place fails to have all materials
32 or substances involving the controlled substance, immediate
33 precursor or controlled substance analog removed from or
34 remediated on the building or place by an entity certified or licensed
35 to do so within 180 days after the building or place is no longer used
36 for the purpose of unlawfully manufacturing a controlled substance,
37 immediate precursor or controlled substance analog.

38 5. Agricultural activity conducted on farmland consistent with
39 good agricultural practice and established before surrounding
40 nonagricultural activities is not a public nuisance unless it has a
41 substantial adverse effect on the public health or safety. It is
42 presumed that an agricultural activity which does not violate a
43 federal, state or local law, ordinance or regulation constitutes good
44 agricultural practice.



1 6. A shooting range is not a public nuisance with respect to any
2 noise attributable to the shooting range if the shooting range is in
3 compliance with the provisions of all applicable statutes, ordinances
4 and regulations concerning noise:

5 (a) As those provisions existed on October 1, 1997, for a
6 shooting range that begins operation on or before October 1, 1997;
7 or

8 (b) As those provisions exist on the date that the shooting range
9 begins operation, for a shooting range in operation after October 1,
10 1997.

11 ➤ A shooting range is not subject to any state or local law related to
12 the control of noise that is adopted or amended after the date set
13 forth in paragraph (a) or (b), as applicable, and does not constitute a
14 nuisance for failure to comply with any such law.

15 7. *A system for obtaining wind energy does not constitute a*
16 *nuisance with respect to the height or appearance of the system or*
17 *any noise attributable to the system if, on the date a permit or*
18 *other authorization is issued for the system or on the date any*
19 *construction or installation of the system begins, the system is in*
20 *compliance with the provisions of all applicable statutes,*
21 *ordinances and regulations concerning the height or appearance*
22 *of a system or noise attributable to the system.*

23 8. As used in this section:

24 (a) "Board of health" has the meaning ascribed to it in
25 NRS 439.4797.

26 (b) "Controlled substance analog" has the meaning ascribed to it
27 in NRS 453.043.

28 (c) "Criminal gang" has the meaning ascribed to it in
29 NRS 193.168.

30 (d) "Immediate precursor" has the meaning ascribed to it in
31 NRS 453.086.

32 (e) "Shooting range" has the meaning ascribed to it in
33 NRS 40.140.

34 **Sec. 16.** NRS 244.363 is hereby amended to read as follows:

35 244.363 Except as otherwise provided in **[subsection]**
36 **subsection 3 and 4** of NRS 40.140 and **[subsection] subsections 6**
37 **and 7** of NRS 202.450, the boards of county commissioners in their
38 respective counties may, by ordinance regularly enacted, regulate,
39 control and prohibit, as a public nuisance, excessive noise which is
40 injurious to health or which interferes unreasonably with the
41 comfortable enjoyment of life or property within the boundaries of
42 the county.

43 **Sec. 17.** NRS 266.335 is hereby amended to read as follows:

44 266.335 The city council may:



1 1. Except as otherwise provided in ~~subsection~~ *subsections* 3
2 *and 4* of NRS 40.140 and ~~subsection~~ *subsections* 6 *and 7* of NRS
3 202.450, determine by ordinance what shall be deemed nuisances.

4 2. Provide for the abatement, prevention and removal of the
5 nuisances at the expense of the person creating, causing or
6 committing the nuisances.

7 3. Provide that the expense of removal is a lien upon the
8 property upon which the nuisance is located. The lien must:

9 (a) Be perfected by recording with the county recorder a
10 statement by the city clerk of the amount of expenses due and
11 unpaid and describing the property subject to the lien.

12 (b) Be coequal with the latest lien thereon to secure the payment
13 of general taxes.

14 (c) Not be subject to extinguishment by the sale of any property
15 because of the nonpayment of general taxes.

16 (d) Be prior and superior to all liens, claims, encumbrances and
17 titles other than the liens of assessments and general taxes.

18 4. Provide any other penalty or punishment of persons
19 responsible for the nuisances.

20 **Sec. 18.** NRS 268.412 is hereby amended to read as follows:

21 268.412 Except as otherwise provided in ~~subsection~~
22 *subsections* 3 *and 4* of NRS 40.140 and ~~subsection~~ *subsections* 6
23 *and 7* of NRS 202.450, the city council or other governing body of a
24 city may, by ordinance regularly enacted, regulate, control and
25 prohibit, as a public nuisance, excessive noise which is injurious to
26 health or which interferes unreasonably with the comfortable
27 enjoyment of life or property within the boundaries of the city.

28 **Sec. 19.** NRS 269.205 is hereby amended to read as follows:

29 269.205 ~~The~~ *Except as otherwise provided in subsection 4 of*
30 *NRS 40.140 and subsection 7 of NRS 202.450, the* town board or
31 board of county commissioners may determine what are nuisances
32 in any unincorporated town, and provide for the punishment,
33 prevention and removal of the nuisances.

