

ASSEMBLY BILL NO. 236—ASSEMBLYMAN HARDY

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to energy systems that use certain types of renewable energy. (BDR 58-248)

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 energy; revising provisions governing net metering systems; exempting certain types of renewable energy systems from the requirements of the Utility Environmental Protection Act; prohibiting certain restrictions on the location and use of wind energy systems; requiring local building codes and zoning ordinances to allow the use of certain types of renewable energy systems under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, certain electric utilities are required to allow their
2 customers to use net metering systems on their property to generate electricity from
3 certain types of renewable energy. (NRS 704.766-704.775) The electricity
4 generated from a net metering system is used to offset the customer’s demand for
5 electricity from the utility. (NRS 704.771, 704.775) A net metering system used by
6 a customer may not have a generating capacity of more than 30 kilowatts.
7 (NRS 704.771)

8 This bill provides that a utility is not required to allow additional customers to
9 use net metering systems after the cumulative capacity of all such net metering
10 systems is equal to 1 percent of the utility’s peak capacity. This bill authorizes a
11 customer to use a net metering system that has generating capacity of not more than
12 150 kilowatts. This bill also establishes one formula for calculating the net cost of
13 electricity for a customer whose net metering system has a capacity of 30 kilowatts
14 or less and a different formula for a customer whose net metering system has a
15 capacity greater than 30 kilowatts. The bill allows a customer with the smaller
16 capacity system to carry forward excess electricity from one billing period to
17 another.



18 Under existing law, a person must obtain a permit from the Public Utilities
19 Commission of Nevada before constructing certain electric generating plants and
20 their associated facilities. (NRS 704.820-704.900) However, such permitting
21 requirements do not apply to electric generating plants and their associated facilities
22 located entirely within the boundaries of a county whose population is 100,000 or
23 more. (NRS 704.860)

24 This bill creates an exception from the permitting requirements for electric
25 generating plants and their associated facilities if they use certain types of
26 renewable energy as their primary source of energy to generate electricity and have
27 a generating capacity of not more than 150 kilowatts.

28 Under existing law, deeds and other legal instruments affecting real property
29 and local ordinances, regulations and plans governing real property may not
30 prohibit or unreasonably restrict an owner from using a solar energy system on his
31 property. (NRS 111.239, 278.0208)

32 This bill amends existing law to provide that an owner may not be prohibited or
33 unreasonably restricted from using a wind energy system on his property.

34 Under existing law, a homeowners' association may not unreasonably restrict,
35 prohibit or withhold approval for an owner of a unit to make certain improvements
36 to his unit, such as adding shutters to aid in reducing the energy costs for the unit.
37 (NRS 116.2111)

38 This bill extends such protections to an owner who wants to improve his unit
39 by adding a wind energy system that reduces the energy costs for the unit if the
40 property where the wind energy system is located is at least 2 acres in size.
41 However, the bill also provides that a unit owner may not add such a wind energy
42 system unless he obtains the consent of every person who owns property within 300
43 feet of his unit.

44 Existing law requires a local government to amend its building codes to permit
45 a person to use solar energy to heat a structure to the extent the local climate
46 allows. (NRS 278.580)

47 This bill requires a local government to amend its building codes and, if
48 necessary, its zoning ordinances and regulations to permit a person to use solar
49 energy systems and wind energy systems to reduce the energy costs for a structure
50 to the extent the local climate allows for the use of such systems.

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

1 **Section 1.** NRS 704.771 is hereby amended to read as follows:

2 704.771 "Net metering system" means a facility or energy
3 system for the generation of electricity that:

4 1. Uses renewable energy as its primary source of energy to
5 generate electricity;

6 2. Has a generating capacity of not more than ~~300~~ 150
7 kilowatts;

8 3. Is located on the customer-generator's premises;

9 4. Operates in parallel with the utility's transmission and
10 distribution facilities; and

11 5. Is intended primarily to offset part or all of the customer-
12 generator's requirements for electricity.



1 **Sec. 2.** NRS 704.773 is hereby amended to read as follows:

2 704.773 1. A utility shall offer net metering, as set forth in
3 NRS 704.775, to the customer-generators operating within its
4 service area ~~f-~~

5 ~~—2.—A.] until the cumulative capacity of all such net metering~~
6 ~~systems is equal to 1 percent of the utility’s peak capacity.~~

7 2. *If the net metering system of a customer-generator who*
8 *accepts the offer of a utility for net metering has a capacity of not*
9 *more than 30 kilowatts, the utility:*

10 (a) Shall offer to make available to ~~[each of its customer-~~
11 ~~generators who has accepted its offer for net metering]~~ *the*
12 *customer-generator* an energy meter that is capable of registering
13 the flow of electricity in two directions.

14 (b) May, at its own expense and with the written consent of the
15 customer-generator, install one or more additional meters to monitor
16 the flow of electricity in each direction.

17 (c) Shall not charge a customer-generator any fee or charge that
18 would increase the customer-generator’s minimum monthly charge
19 to an amount greater than that of other customers of the utility in the
20 same rate class as the customer-generator.

21 3. *If the net metering system of a customer-generator who*
22 *accepts the offer of a utility for net metering has a capacity of*
23 *more than 30 kilowatts, the utility may:*

24 (a) *Require the customer-generator to install at its own cost an*
25 *energy meter that is capable of measuring generation output and*
26 *customer load.*

27 (b) *Charge the customer-generator any applicable fee or*
28 *charge charged to other customers of the utility in the same rate*
29 *class as the customer-generator, including, without limitation,*
30 *customer, demand and facility charges.*

31 **Sec. 3.** NRS 704.775 is hereby amended to read as follows:

32 704.775 1. The billing period for net metering ~~[may be~~
33 ~~either]~~ *must be* a monthly period . ~~[or, with the written consent of~~
34 ~~the customer-generator, an annual period.~~

35 ~~—2.—The]~~

36 2. *If a customer-generator’s net metering system has a*
37 *capacity of not more than 30 kilowatts, the net energy*
38 *measurement must be calculated in the following manner:*

39 (a) The utility shall measure , *in kilowatt hours,* the net
40 electricity produced or consumed during the billing period, in
41 accordance with normal metering practices.

42 (b) If the electricity supplied by the utility exceeds the electricity
43 generated by the customer-generator which is fed back to the utility
44 during the billing period, the customer-generator must be billed for
45 the net electricity supplied by the utility.



1 (c) If the electricity generated by the customer-generator which
2 is fed back to the utility exceeds the electricity supplied by the
3 utility during the billing period:

4 (1) Neither the utility nor the customer-generator is entitled
5 to compensation for electricity provided to the other during the
6 billing period. ~~[; and]~~

7 (2) *The excess electricity which is fed back to the utility*
8 *during the billing period is carried forward to the next billing*
9 *period as an addition to the kilowatt hours generated by the*
10 *customer-generator in that billing period. If the customer-*
11 *generator is billed for electricity pursuant to a time-of-use rate*
12 *schedule, the excess electricity carried forward must be added to*
13 *the same time-of-use period as the time-of-use period in which it*
14 *was generated unless the subsequent billing period lacks a*
15 *corresponding time-of-use period. In that case, the excess*
16 *electricity carried forward must be apportioned evenly among the*
17 *available time-of-use periods.*

18 (3) *Excess electricity may be carried forward to subsequent*
19 *billing periods indefinitely, but a customer-generator is not*
20 *entitled to receive compensation for any excess electricity that*
21 *remains if:*

22 (I) *The net metering system ceases to operate or is*
23 *disconnected from the utility's transmission and distribution*
24 *facilities;*

25 (II) *The customer-generator ceases to be a customer of*
26 *the utility at the premises served by the net metering system; or*

27 (III) *The customer-generator transfers the net metering*
28 *system to another person.*

29 (4) The excess electricity which is fed back to the utility shall
30 be deemed to be electricity that the utility generated or acquired
31 from a renewable energy system for the purposes of complying with
32 its portfolio standard pursuant to NRS 704.7801 to 704.7828,
33 inclusive.

34 3. *If a customer-generator's net metering system has a*
35 *capacity of more than 30 kilowatts, the net energy measurement*
36 *must be calculated in the following manner:*

37 (a) *The utility shall:*

38 (1) *Measure, in kilowatt hours, the amount of electricity*
39 *supplied by the utility to the customer-generator during the billing*
40 *period and calculate its value using the tariff that would be*
41 *applicable if the customer-generator did not use a net metering*
42 *system; and*

43 (2) *Measure, in kilowatt hours, the amount of electricity*
44 *generated by the customer-generator which is fed back to the*
45 *utility during the billing period and calculate its value at a rate*



1 *that is consistent with the rate used to calculate the value of the*
2 *electricity supplied by the utility.*

3 *(b) If the value of electricity supplied by the utility exceeds the*
4 *value of the electricity generated by the customer-generator which*
5 *is fed back to the utility during the billing period, the customer-*
6 *generator must be billed for the net value of the electricity*
7 *supplied by the utility.*

8 *(c) If the value of the electricity generated by the customer-*
9 *generator which is fed back to the utility exceeds the value of the*
10 *electricity supplied by the utility during the billing period:*

11 *(1) Neither the utility nor the customer-generator is entitled*
12 *to compensation for the value of the electricity provided to the*
13 *other during the billing period.*

14 *(2) The value of the excess electricity:*

15 *(I) Must not be shown as a credit on the customer-*
16 *generator's bill for that billing period or carried forward to the*
17 *next billing period as a credit balance in the customer-generator's*
18 *account.*

19 *(II) Does not reduce any other fee or charge imposed by*
20 *the utility.*

21 *4. A bill for electrical service is due at the time established*
22 *pursuant to the terms of the contract between the utility and the*
23 *customer-generator.*

24 **Sec. 4.** NRS 704.860 is hereby amended to read as follows:

25 704.860 "Utility facility" means:

26 1. Electric generating plants and their associated facilities,
27 ~~other than~~ *except:*

28 *(a) Electric generating* plants and their associated facilities that
29 are or will be located entirely within the boundaries of a county
30 whose population is 100,000 or more ~~[-];~~ *or*

31 *(b) Electric generating plants and their associated facilities*
32 *which use or will use renewable energy, as defined in NRS*
33 *704.7811, as their primary source of energy to generate electricity*
34 *and which have or will have a generating capacity of not more*
35 *than 150 kilowatts, including, without limitation, a net metering*
36 *system, as defined in NRS 704.771.*

37 ↪ As used in this subsection, "associated facilities" includes,
38 without limitation, any facilities for the storage, transmission or
39 treatment of water, including, without limitation, facilities to supply
40 water or for the treatment or disposal of wastewater, which support
41 or service an electric generating plant.

42 2. Electric transmission lines and transmission substations that:

43 (a) Are designed to operate at 200 kilovolts or more;

44 (b) Are not required by local ordinance to be placed
45 underground; and



- 1 (c) Are constructed outside any incorporated city.
- 2 3. Gas transmission lines, storage plants, compressor stations
- 3 and their associated facilities when constructed outside:
- 4 (a) Any incorporated city; and
- 5 (b) Any county whose population is 100,000 or more.
- 6 4. Water storage, transmission and treatment facilities, other
- 7 than facilities for the storage, transmission or treatment of water
- 8 from mining operations.
- 9 5. Sewer transmission and treatment facilities.

10 **Sec. 5.** NRS 111.239 is hereby amended to read as follows:

11 111.239 1. Any covenant, restriction or condition contained

12 in a deed, contract or other legal instrument which affects the

13 transfer, sale or any other interest in real property that prohibits or

14 unreasonably restricts the owner of the property from using a system

15 for obtaining solar *or wind* energy on his property is void and

16 unenforceable.

17 2. For the purposes of this section, “unreasonably restricts the

18 use of a system for obtaining solar *or wind* energy” means placing a

19 restriction or requirement on the use of such a system which

20 significantly decreases the efficiency or performance of the system

21 and does not allow for the use of an alternative system at a

22 comparable cost and with comparable efficiency and performance.

23 **Sec. 6.** NRS 116.2111 is hereby amended to read as follows:

24 116.2111 1. Except as otherwise provided in this section and

25 subject to the provisions of the declaration and other provisions of

26 law, a unit’s owner:

27 (a) May make any improvements or alterations to his unit that

28 do not impair the structural integrity or mechanical systems or

29 lessen the support of any portion of the common-interest

30 community;

31 (b) May not change the appearance of the common elements, or

32 the exterior appearance of a unit or any other portion of the

33 common-interest community, without permission of the association;

34 and

35 (c) After acquiring an adjoining unit or an adjoining part of an

36 adjoining unit, may remove or alter any intervening partition or

37 create apertures therein, even if the partition in whole or in part is a

38 common element, if those acts do not impair the structural integrity

39 or mechanical systems or lessen the support of any portion of the

40 common-interest community. Removal of partitions or creation of

41 apertures under this paragraph is not an alteration of boundaries.

42 2. An association may not:

43 (a) Unreasonably restrict, prohibit or otherwise impede the

44 lawful rights of a unit’s owner to have reasonable access to his unit.



1 (b) Unreasonably restrict, prohibit or withhold approval for a
2 unit's owner to add to a unit:

3 (1) Improvements such as ramps, railings or elevators that
4 are necessary to improve access to the unit for any occupant of the
5 unit who has a disability;

6 (2) Additional locks to improve the security of the unit; ~~[or]~~

7 (3) Shutters to improve the security of the unit or to ~~[aid in]~~
8 ~~reducing]~~ *reduce* the costs of energy for the unit ~~[.];~~ *or*

9 (4) *A system that uses wind energy to reduce the costs of*
10 *energy for the unit if the boundaries of the unit encompass 2 acres*
11 *or more within the common-interest community.*

12 (c) With regard to approving or disapproving any improvement
13 or alteration made to a unit, act in violation of any state or federal
14 law.

15 3. Any improvement or alteration made pursuant to subsection
16 2 that is visible from any other portion of the common-interest
17 community must be installed, constructed or added in accordance
18 with the procedures set forth in the governing documents of the
19 association and must be selected or designed to the maximum extent
20 practicable to be compatible with the style of the common-interest
21 community.

22 *4. A unit's owner may not add to the unit a system that uses*
23 *wind energy as described in subparagraph 4 of paragraph (b) of*
24 *subsection 2 unless he first obtains the written consent of each*
25 *owner of property within 300 feet of any boundary of the unit.*

26 **Sec. 7.** NRS 278.0208 is hereby amended to read as follows:

27 278.0208 1. A governing body shall not adopt an ordinance,
28 regulation or plan or take any other action that prohibits or
29 unreasonably restricts the owner of real property from using a
30 system for obtaining solar *or wind* energy on his property.

31 2. Any covenant, restriction or condition contained in a deed,
32 contract or other legal instrument which affects the transfer, sale or
33 any other interest in real property that prohibits or unreasonably
34 restricts the owner of the property from using a system for obtaining
35 solar *or wind* energy on his property is void and unenforceable.

36 3. For the purposes of this section, "unreasonably restricting
37 the use of a system for obtaining solar *or wind* energy" means
38 placing a restriction or requirement on the use of such a system
39 which significantly decreases the efficiency or performance of the
40 system and does not allow for the use of an alternative system at a
41 comparable cost and with comparable efficiency and performance.

42 **Sec. 8.** NRS 278.580 is hereby amended to read as follows:

43 278.580 1. Subject to the limitation set forth in NRS 244.368,
44 the governing body of any city or county may adopt a building code,
45 specifying the design, soundness and materials of structures, and



1 may adopt rules, ordinances and regulations for the enforcement of
2 the building code.

3 2. The governing body may also fix a reasonable schedule of
4 fees for the issuance of building permits. A schedule of fees so fixed
5 does not apply to the State of Nevada, the University and
6 Community College System of Nevada or any school district, except
7 that such entities may contract with the governing body to pay such
8 fees for the issuance of building permits, the review of plans and the
9 inspection of construction. Except as it may agree to in such a
10 contract, a governing body is not required to provide for the review
11 of plans or the inspection of construction with respect to a structure
12 of the State of Nevada, the University and Community College
13 System of Nevada or any school district.

14 3. Notwithstanding any other provision of law, the State and its
15 political subdivisions shall comply with all zoning regulations
16 adopted pursuant to this chapter, except for the expansion of any
17 activity existing on April 23, 1971.

18 4. A governing body shall amend its building codes *and, if*
19 *necessary, its zoning ordinances and regulations* to permit the use
20 of ~~[straw]~~ :

21 (a) *Straw* or other materials and technologies which conserve
22 scarce natural resources or resources that are renewable in the
23 construction of a structure ; and ~~[the use of]~~

24 (b) *Systems which use solar or wind energy to reduce the costs*
25 *of energy* for ~~[the heating of]~~ a structure,

26 *↳ to the extent the local climate allows [] for the use of such*
27 *materials, technologies, resources and systems.*

28 5. A governing body shall amend its building codes to include:

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

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

