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.

~

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:

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

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

Under existing law, a person must obtain a permit from the Public Utilities Commission of Nevada before constructing certain electric generating plants and

their associated facilities. (NRS 704.820-704.900) However, such permitting requirements do not apply to electric generating plants and their associated facilities located entirely within the boundaries of a county whose population is 100,000 or more. (NRS 704.860)

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

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

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

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

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

Existing law sets forth the subject matter that a governing body may include in a master plan and requires that zoning regulations be adopted in accordance with the master plan for land use. (NRS 278.160, 278.250)

This bill adds solar and wind energy to the subject matter of master plans and requires zoning regulations to be adopted and designed to promote systems which use solar or wind energy.

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

This bill requires a local government to amend its building codes and, if necessary, its zoning ordinances and regulations to permit a person to use solar energy systems and wind energy systems to reduce the energy costs for a structure to the extent the local climate allows for the use of such systems if the systems and structures comply with applicable codes and ordinances, such as codes and ordinances relating to the design, location and soundness of the systems and structures.

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

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

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

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

2. Has a generating capacity of not more than ~~[30]~~ ***150*** kilowatts;

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

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

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

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

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

~~2. A]~~ ***until the cumulative capacity of all such net metering systems is equal to 1 percent of the utility's peak capacity.***

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

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

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

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

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

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

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

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

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

~~2. The]~~

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

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

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

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

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

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

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

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

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

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

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

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

(a) The utility shall:

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

(2) Measure, in kilowatt hours, the amount of electricity generated by the customer-generator which is fed back to the utility during the billing period and calculate its value at a rate that is consistent with the rate used to calculate the value of the electricity supplied by the utility.

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

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

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

(2) The value of the excess electricity:

(I) Must not be shown as a credit on the customer-generator's bill for that billing period but must be reflected as a credit that is carried forward to offset the value of the electricity supplied by the utility during a subsequent billing period. At the discretion of the utility, the credit may be in a dollar amount or in kilowatt hours. If the credit is reflected as excess electricity and the customer-generator is billed for electricity pursuant to a time-of-use rate schedule, the excess electricity carried forward must be added to the same time-of-use period as the time-of-use period in which it was generated unless the subsequent billing period lacks a corresponding time-of-use period. In that case, the excess electricity carried forward must be apportioned evenly among the available time-of-use periods. Excess electricity may be carried forward to subsequent billing periods indefinitely, but a customer-generator is not entitled to receive compensation for any excess electricity that remains if the net metering system ceases to operate or is disconnected from the utility's transmission and distribution facilities, the customer-generator ceases to be a customer of the utility at the premises served by the net metering system or the customer-generator transfers the net metering system to another person.

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

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

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

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

704.860 "Utility facility" means:

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

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

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

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

2. Electric transmission lines and transmission substations that:

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

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

(c) Are constructed outside any incorporated city.

3. Gas transmission lines, storage plants, compressor stations and their associated facilities when constructed outside:

(a) Any incorporated city; and

(b) Any county whose population is 100,000 or more.

4. Water storage, transmission and treatment facilities, other than facilities for the storage, transmission or treatment of water from mining operations.

5. Sewer transmission and treatment facilities.

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

111.239 1. Any covenant, restriction or condition contained in a deed, contract or other legal instrument which affects the transfer, sale or any other interest in real property that prohibits or unreasonably restricts the owner of the property from using a system

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

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

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

116.2111 1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 8. NRS 278.160 is hereby amended to read as follows:

278.160 1. Except as otherwise provided in subsection 4 of NRS 278.150 and subsection 3 of NRS 278.170, the master plan, with the accompanying charts, drawings, diagrams, schedules and reports, may include such of the following subject matter or portions thereof as are appropriate to the city, county or region, and as may be made the basis for the physical development thereof:

(a) Community design. Standards and principles governing the subdivision of land and suggestive patterns for community design and development.

(b) Conservation plan. For the conservation, development and utilization of natural resources, including, without limitation, water and its hydraulic force, underground water, water supply, ***solar or wind energy,*** forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The plan must also cover the reclamation of land and waters, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land in stream channels and other areas

required for the accomplishment of the conservation plan, prevention, control and correction of the erosion of soils through proper clearing, grading and landscaping, beaches and shores, and protection of watersheds. The plan must also indicate the maximum tolerable level of air pollution.

(c) Economic plan. Showing recommended schedules for the allocation and expenditure of public money in order to provide for the economical and timely execution of the various components of the plan.

(d) Historical properties preservation plan. An inventory of significant historical, archaeological and architectural properties as defined by a city, county or region, and a statement of methods to encourage the preservation of those properties.

(e) Housing plan. The housing plan must include, without limitation:

(1) An inventory of housing conditions, needs and plans and procedures for improving housing standards and for providing adequate housing.

(2) An inventory of affordable housing in the community.

(3) An analysis of the demographic characteristics of the community.

(4) A determination of the present and prospective need for affordable housing in the community.

(5) An analysis of any impediments to the development of affordable housing and the development of policies to mitigate those impediments.

(6) An analysis of the characteristics of the land that is the most appropriate for the construction of affordable housing.

(7) An analysis of the needs and appropriate methods for the construction of affordable housing or the conversion or rehabilitation of existing housing to affordable housing.

(8) A plan for maintaining and developing affordable housing to meet the housing needs of the community.

(f) Land use plan. An inventory and classification of types of natural land and of existing land cover and uses, and comprehensive plans for the most desirable utilization of land. The land use plan may include a provision concerning the acquisition and use of land that is under federal management within the city, county or region, including, without limitation, a plan or statement of policy prepared pursuant to NRS 321.7355.

(g) Population plan. An estimate of the total population which the natural resources of the city, county or region will support on a continuing basis without unreasonable impairment.

(h) Public buildings. Showing locations and arrangement of civic centers and all other public buildings, including the

architecture thereof and the landscape treatment of the grounds thereof.

(i) Public services and facilities. Showing general plans for sewage, drainage and utilities, and rights-of-way, easements and facilities therefor, including, without limitation, any utility projects required to be reported pursuant to NRS 278.145.

(j) Recreation plan. Showing a comprehensive system of recreation areas, including, without limitation, natural reservations, parks, parkways, trails, reserved riverbank strips, beaches, playgrounds and other recreation areas, including, when practicable, the locations and proposed development thereof.

(k) Rural neighborhoods preservation plan. In any county whose population is 400,000 or more, showing general plans to preserve the character and density of rural neighborhoods.

(l) Safety plan. In any county whose population is 400,000 or more, identifying potential types of natural and man-made hazards, including, without limitation, hazards from floods, landslides or fires, or resulting from the manufacture, storage, transfer or use of bulk quantities of hazardous materials. The plan may set forth policies for avoiding or minimizing the risks from those hazards.

(m) School facilities plan. Showing the general locations of current and future school facilities based upon information furnished by the appropriate local school district.

(n) Seismic safety plan. Consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking or to ground failures.

(o) Solid waste disposal plan. Showing general plans for the disposal of solid waste.

(p) Streets and highways plan. Showing the general locations and widths of a comprehensive system of major traffic thoroughfares and other traffic ways and of streets and the recommended treatment thereof, building line setbacks, and a system of naming or numbering streets and numbering houses, with recommendations concerning proposed changes.

(q) Transit plan. Showing a proposed multimodal system of transit lines, including mass transit, streetcar, motorcoach and trolley coach lines, paths for bicycles and pedestrians, and related facilities.

(r) Transportation plan. Showing a comprehensive transportation system, including, without limitation, locations of rights-of-way, terminals, viaducts and grade separations. The plan may also include port, harbor, aviation and related facilities.

2. The commission may prepare and adopt, as part of the master plan, other and additional plans and reports dealing with such other subjects as may in its judgment relate to the physical

development of the city, county or region, and nothing contained in NRS 278.010 to 278.630, inclusive, prohibits the preparation and adoption of any such subject as a part of the master plan.

Sec. 9. NRS 278.250 is hereby amended to read as follows:

278.250 1. For the purposes of NRS 278.010 to 278.630, inclusive, the governing body may divide the city, county or region into zoning districts of such number, shape and area as are best suited to carry out the purposes of NRS 278.010 to 278.630, inclusive. Within the zoning district ***,*** it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.

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

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

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

(c) To provide for recreational needs.

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

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

(f) To develop a timely, orderly and efficient arrangement of transportation and public facilities and services, including facilities and services for bicycles.

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

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

(i) To promote health and the general welfare.

(j) To ensure the development of an adequate supply of housing for the community, including the development of affordable housing.

(k) To ensure the protection of existing neighborhoods and communities, including the protection of rural preservation neighborhoods.

(l) To promote systems which use solar or wind energy.

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

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

5. As used in this section:

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

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

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

Sec. 10. NRS 278.580 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 11. The Legislature hereby declares that wind energy is a clean, renewable energy source, the use of which must be promoted. Regional planning is needed for communities to choose good turbine locations where wind is available. The provisions of this act allow the governing bodies of cities and counties to promote the use of this renewable resource while promoting the general welfare by regulating the location, height and noise level of wind turbines, as well as the parcel size on which turbines may be placed. The provisions of this act require cities and counties to balance the effects that wind turbines have on the environment through the existing master plan and zoning process.