



**OFFICE OF THE GOVERNOR  
NEVADA STATE OFFICE OF ENERGY**

**Memorandum**

Legislative Concerns with Amended Regulation R125-11  
November 14, 2012

During the Legislative Commission Subcommittee to Review Regulations (Commission) hearing on November 1, 2012, Assemblywoman Kirkpatrick expressed concerns over some portions of the proposed regulations LCB File No R125-11. The adoption by the Commission was deferred until NSOE could provide adequate responses to the stated concerns. NSOE committed to meeting with Assemblywoman Kirkpatrick to ensure that the regulations met the legislative intent. Below are the items of concern noted in the hearing and NSOE's response and/or explanation.

**1. Section 7 (amends Section 16 of R094-10): NSOE has limited the number of processing days from 15 to 2. Is this enough time?**

- Explanation of change: The 15 day provision had to do with the time period between the receipt of a pre-application and application. The pre-application process is being eliminated in its entirety. The NSOE has 2 days to assign an application filing number (AFN), but still has a reasonable period of time in which to review the application for completeness.
- Additional Comment: This is not presently an issue and most (if not all processes) are timely.

**2. Section 13, 2(a) (amends Section 24 of R094-10): The proposed amended regulation defines a full-time employee to work "an average of 35 or more hours per week..." The concern expressed was that it was important to define full time as 40 hours per week when the bill was drafted so that Nevada could realize the maximum allowable payroll, taxes, and other associated revenue from a full-time employee. Does this also cause employees to lose their ineligibility for insurance with their employer if they aren't considered full-time?**

- Explanation of change: The definition of "part-time" employment differs, depending upon the specific use of the data. There is a precedent for this in a definition put forth by the U.S. Bureau of Labor Statistics, as put forth in

**4. Section 13, 5(g) (amends Section 24 of R094-10): The proposed amended language allows the Director to approve a minimum employer contribution of less than 80 percent if there is a written request. The concern was that the original bill was intended to ensure that employers were providing their employees with proper health coverage and not employing cheap labor.**

- Explanation of change: In the June 7, 2012 workshop, Scott Sherer with Holland and Hart pointed out that in rural Nevada, the health insurance plan requirement is driving contractors to use out of state, larger companies. A large percentage of small Nevada employers are not able to afford insurance at all. The Director would not necessarily approve every request, but can review these requests on a case-by-case basis in order to allow Nevada companies/contractors the opportunity to compete for these projects.

**5. Section 13, 7 (amends Section 24 of R094-10): The proposed amended language defines “Management and Administrative Employee”. The Committee was questioning the source of this definition.**

- Explanation of change: The question of what a management or administrative employee is, when dealing with the wage rates, has come up often during the course of the tax abatement process. This was an attempt to clarify what is meant by these two terms because each developer, and their associated contractors and subcontractors have different titles for their employees.
- Legislative intent: The exclusion of management and administrative employees in the statute was to prevent companies from counting the higher paid employees in the “average hourly wage” determination. NSOE believes that this definition provides clarification and supports the legislative intent.
- Additional Comment: The definition in the proposed regulation is *adapted* from the Fair Labor Standards Act and was provided by Scott Scherer of Holland and Hart.

*Administrative Employee*

- *The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;*
- *The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and*
- *The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. To meet the “directly related to management or general business operations” requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example from working on a manufacturing production line or selling a product in a retail or service establishment. Work “directly*

If leases were expressly prohibited through the intent and/or testimony of the bill, we can clarify the language in the proposed regulations.

End of Memo

A handwritten signature in black ink that reads "Stacey Crowley". The signature is written in a cursive, flowing style.

Stacey Crowley  
Director  
Nevada State Office of Energy