

**BRIAN SANDOVAL**  
*Governor*

**STATE OF NEVADA**

**ANGELA DYKEMA**  
*Director*

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**GOVERNOR'S OFFICE OF ENERGY**

October 25, 2017

Legislative Counsel Bureau  
Attn: Judith Wytock  
Legislative Building – Legal Division  
401 S. Carson Street  
Carson City, NV 89701

Re: LCB File No. R022-17

Dear Ms. Wytock,

Please find the enclosed documents for submission to the Legislative Commission for the next meeting:

- Form for Filing Administrative Regulations
- Informational Statement
- Small Business Impact Statement
- Notice of Adoption of Regulation
- Proposed Regulation of the Director of the Governor's Office of Energy – Adopted on October 25, 2017

Please do not hesitate to call me should you have any questions, (775) 687-1850 ext. 7308

Sincerely,

A handwritten signature in blue ink that reads "Laura Wickham".

Laura Wickham  
Management Analyst III

SECRETARY OF STATE  
FILING DATA

**Form for Filing  
Administrative Regulations**

**Agency:**  
Governor's Office of Energy

FOR EMERGENCY  
REGULATIONS ONLY

Effective date \_\_\_\_\_

Expiration date \_\_\_\_\_

\_\_\_\_\_  
Governor's signature

Classification: [ ] PROPOSED [X] ADOPTED BY AGENCY [ ] EMERGENCY

Brief description of action: Adoption of the Regulation pertaining to chapter 701A of the Nevada Administrative Code relating to the following by Section. Sections 1-2: Ability to utilize revenues in the Account to further GOE performance measures and initiatives established by the Governor and/or the Legislature. Section 3: To document justification of an application denial by the board of county commissioners and ensure it is based on the parameters established. Section 4: To provide clarity regarding the wage requirement for operational employees. Section 5: To allow sufficient time for annual compliance reports to be prepared and submitted.

Authority citation other than 233B: NRS 701A.450, NRS 701A.365

Notice date(s): Workshop – June 7, 2017

Hearing – September 25, 2017

Hearing date(s):

October 25, 2017



Angela Dykema, Director



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GOVERNOR'S OFFICE OF ENERGY

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066  
Informational Statement  
LCB File No. R022-17

1. A clear and concise explanation of the need for the adopted regulation.

*The proposed regulation amendments are intended to allow the utilization of revenues in the Account to further GOE performance measures and initiatives established by the Governor and/or the Legislature. It will also document justification of an application denial by the board of county commissioners and ensure it is based on the parameters established. The proposed regulation will provide clarity regarding the wage requirement for operational employees and allow sufficient time for annual compliance reports to be prepared and submitted.*

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

*Copies of the proposed regulation, the notice of workshop and notice of intent to act upon the regulation were sent by email or fax to persons who were known to have an interest in the adoption of the proposed regulation as well as any person who had specifically requested such notice. These documents were also made available at the website of the Governor's Office of Energy (GOE), [www.energy.nv.gov](http://www.energy.nv.gov), the website of the Nevada Legislature at <http://leg.state.nv.us/app/Notice/A/>, faxed or emailed to all county libraries in Nevada and posted at the following locations:*

Governor's Office of Energy  
755 N. Roop Street, Suite 202  
Carson City, NV

Carson City Library  
900 N. Roop Street  
Carson City, NV

State Library and Archives  
100 N. Stewart Street  
Carson City, NV

Nevada State Legislative Building  
401 S. Carson Street  
Carson City, NV

State of NV Dept. of Administration  
209 E. Musser Street  
Carson City, NV

Governor's Office of Energy  
<http://energy.nv.gov>

*A workshop was held on June 22, 2017. The Governor's Office of Energy took oral comments from the public and interested parties. Concerns were voiced by NACO regarding Section 2*

*stating it is the county's authority to make a determination on the denial based on the criteria. The statement by NACO was analyzed by various members present and comments were taken under consideration by the Governor's Office of Energy.*

*Thereafter, on September 25, 2017, the Director issued a Notice of Hearing and Notice of Intent to Act Upon a Regulation. The hearing was held in Carson City, at the Governor's Office of Energy with teleconference to the Grant Sawyer Building in Las Vegas, on October 25, 2017.*

*A copy of the minutes which provide comments made at each hearing are available for review at the Governor's Office of Energy, 755 N. Roop Street, Suite 202, Carson City, NV 89701. A recording of the workshop and hearing are also provided for review at the Governor's Office of Energy.*

**3. The number of persons who:**

- (a) Attended each hearing:** *October 25, 2017 – 6 (Carson City - 5, Las Vegas - 1)*
- (b) Testified at each hearing:** *October 25, 2017 – 2 (Carson City)*
- (c) Submitted written comments:** *October 25, 2017 - 2*

**4. For each person identified in paragraphs (b) and (c) of number 3 above, the following information if provided to the agency conducting the hearing:**

Dagny Stapleton  
NACO  
304 S. Minnesota Street  
Carson City, NV  
(775)883-7863  
[dstapleton@nvnaco.org](mailto:dstapleton@nvnaco.org)

Joshua Hicks  
McDonald Carano  
100 W. Liberty Street  
Reno, NV  
(775)788-2000  
[jhicks@mcdonaldcarano.com](mailto:jhicks@mcdonaldcarano.com)

**5. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

*A Notice of Workshop, Notice of Hearing and Notice of Intent to Act Upon a Regulation, and copy of proposed regulation were sent to a list of interested parties as well as posted at the locations listed under number 2. All parties were invited to provide written comment. Josh Hicks with McDonald Carano and Roman Borisov with Lewis and Roca suggested a change to Section 2 to keep in line with the intent and not require written approval since the current*

language states that an application is deemed approved if no denial is received within the prescribed number of days. Mr. Hicks and Mr. Wilson both expressed their support of the language amendment to Section 4 clarifying wage requirements.

A copy of the minutes which provide a summary of the comments made at each hearing are available for review at the Governor's Office of Energy, 755 N. Roop Street, Suite 202, Carson City, NV 89701. A recording of the workshop and hearing are also provided for review at the Governor's Office of Energy. You may request a copy of either by contacting Laura Wickham: [lwickham@energy.nv.gov](mailto:lwickham@energy.nv.gov).

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

*The permanent regulation was adopted on October 25, 2017. There was a requested change made to Section 3 to further clarify that an application may be deemed approved without receipt of written notice. The regulation was adopted with this additional amendment.*

7. **The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:**

- (a) **Both adverse and beneficial effects on businesses and the public:** *The amended regulations further clarify requirements which must be met by applicants to the program. GOE concluded that these amendments were intended to have only positive impacts upon contractors by encouraging and promoting facilities to construct and operate renewable energy power generation facilities in Nevada.*

*GOE considered the ability for small businesses to identify the policies and procedures that GOE utilizes to manage the abatement program under its authority. The revision or addition of regulations might require additional time or expertise to review, however, GOE provides free, state-wide assistance to all companies who wish to understand this abatement program. Thus, GOE believes that the additional clarification in the proposed regulations will have no negative impact to small businesses.*

- (b) **Both immediate and long-term effects on businesses and the public:** *The amended regulations are intended to effectuate the Legislative intent and will not and are not intended to have any negative impact upon contractors.*

8. **The estimated cost to the agency for enforcement of the proposed regulation:**

*There is no added cost to the agency for this amended regulation.*

9. **A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

*There are no other State or governmental regulations with which this regulation overlaps or duplicates.*

- 10. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

*There are no provisions that duplicate or are more stringent than federal standards.*

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

*There is no fee associated with this regulation.*



Angela Dykema, Director - October 25, 2017  
Governor's Office of Energy

SMALL BUSINESS IMPACT STATEMENT AS REQUIRED BY  
NRS 233B.0608/233B.0609

LCB File No. 2022-17

1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

*Comment was not solicited from small business as the amendments to this regulation do not change the language in a way that would pose a substantive change over the way contractors and subcontractors (small businesses) pay wages now. The Governor's Office of Energy (GOE) has determined that the draft regulations as currently considered may have an effect on contractors but are not likely to pose a direct or significant economic burden upon a small business or contractor, nor would they directly restrict the formation, operation, or expansion of a small business. Furthermore, the primary user of the program governed by these regulations are not considered small businesses.*

2. The manner in which the analysis was conducted.

*The Director and staff analyzed the typical applicant to the program and determined that the proposed amended regulations only apply to contractors of the facilities seeking partial property tax and sales and use tax abatements from GOE. These requirements would only directly affect those businesses, and not all small businesses. Therefore, the net effect of the proposed amended regulations is still positive in that a business complying with the requirements of the regulations will also be receiving abatements that outweigh any additional costs.*

3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

A. Adverse and Beneficial Effects.

*The proposed regulation amendments further clarify requirements which must be met by applicants to the program. GOE concluded that these amendments were intended to have only positive impacts upon contractors by encouraging and promoting facilities to construct and operate renewable energy power generation facilities in Nevada.*

*GOE considered the ability for small businesses to identify the policies and procedures that GOE utilizes to manage the abatement program under its authority. The revision or addition of regulations might require additional time or expertise to review, however, GOE provides free, state-wide assistance to all companies who wish to understand this abatement program. Thus, GOE believes that the additional clarification in the proposed regulations will have no negative impact to small businesses.*

B. Immediate and Long-Term Effects.

*The proposed regulations are intended to effectuate the Legislative intent and will not and are intended not to have any negative impact upon contractors.*

4. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

*There were no methods considered as the proposed regulation changes are not substantive and not known to have an impact upon small business or contractors in the state of Nevada.*

5. The estimated cost to the agency for enforcement of the proposed regulation.

*There is no added cost to the agency for the proposed regulation amendments and additions.*

6. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

*There is no fee associated with this regulation.*

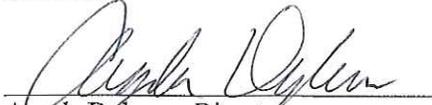
7. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

*There are not provisions that duplicate or are more stringent than federal, state, or local standards.*

8. The reasons for the conclusion of the agency regarding the impact of a regulation on small businesses.

*The GOE determined that the regulation would not have any negative or positive impact on small business because the regulation amendments only provide clarification regarding existing requirements.*

I certify that, to the best of my knowledge or belief, that a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement is accurate

  
Angela Dykema, Director

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STATE OF NEVADA

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**GOVERNOR'S OFFICE OF ENERGY**

**NOTICE OF ADOPTION OF REGULATION**

The Governor's Office of Energy adopted regulation, assigned LCB File No. R022-17, which pertains to chapter 701 of the Nevada Administrative Code on October 25, 2017. A copy of the regulation as adopted is attached hereto.

\_\_\_\_\_  
Angela Dykema, Director

10-25-17

\_\_\_\_\_  
Date

**PROPOSED REGULATION OF THE  
DIRECTOR OF THE OFFICE OF ENERGY**

**LCB File No. R022-17**

August 23, 2017

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted-material~~ is material to be omitted.

AUTHORITY: §§1 and 6, NRS 701A.450; §§2-5, NRS 701A.390.

A REGULATION relating to energy; adopting provisions governing the use of money in the Renewable Energy Account in the State General Fund; revising provisions relating to the denial of certain applications for certain partial abatements of property taxes by the Director of the Office of Energy; revising provisions relating to eligibility for certain energy-related tax incentives; providing that the Director may, upon request, provide an extension of time to file the annual compliance report for certain persons who execute certain abatement agreements with the Office; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law creates the Renewable Energy Account in the State General Fund and requires the Director of the Office of Energy to administer the Account. Under existing law, not less than 75 percent of the money in the Account must be used to offset the cost of electricity to or the use of electricity by retail customers of certain public utilities and the Director is authorized to establish by regulation other uses of the money in the Account. (NRS 701A.450) **Sections 1 and 6** of this regulation provide that the Director will use money in the Account in accordance with existing law and to accomplish the initiatives and goals of the Office of Energy and the Governor and the intent of the laws of this State.

Existing law prohibits the Director of the Office of Energy from approving certain applications for a partial abatement of property taxes submitted by a facility for the generation of process heat from solar renewable energy or a wholesale facility for the generation of electricity from renewable energy unless the application is approved or deemed approved by the board of county commissioners of the county in which the facility will be located. Under existing law, a board of county commissioners is authorized to deny such an application only if the board of county commissioners determines that: (1) the projected cost of the services that the local government is required to provide to the facility will exceed the amount of tax revenue that the local government is projected to receive as a result of the abatement; or (2) the projected financial benefits that will result to the county from the employment by the facility of the residents of this State and from capital investments by the facility in the county will not exceed the projected loss of tax revenue that will result from the abatement. (NRS 701A.365) **Section 2**

of this regulation provides that the Director will deny such an application if the Director receives from each board of county commissioners of a county in which the applicant's facility is located information sufficient to support one of those determinations by the boards of county commissioners. **Section 3** of this regulation makes a conforming change to existing regulations to maintain provisions providing that the Director will set a date for a hearing on an application for a partial abatement of taxes upon receipt of: (1) written notice of the approval of an application from the board of county commissioners; or (2) a determination that the application is deemed approved.

Under existing law, eligibility for certain energy-related tax incentives is based in part on the average wages paid to employees working in a facility or working on the construction of the facility. (NRS 701A.365) **Section 4** of this regulation revises certain requirements with respect to determining compliance with these wage requirements to reflect the way in which the Department of Employment, Training and Rehabilitation annually reports wage data for the State.

Existing regulations require certain persons who execute an agreement with the Director for a partial abatement of taxes to file with the Director an annual compliance report. (NAC 701A.620) **Section 5** of this regulation provides that the Director may, upon request, provide an extension of time to file the annual compliance report and that such extension must not exceed 30 days.

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

*The Director will use money in the Account in accordance with the provisions of NRS 701A.450 and for purposes which accomplish the initiatives and goals of the Office of Energy and the Governor and the intent of the laws of this State.*

**Sec. 2.** NAC 701A.575 is hereby amended to read as follows:

701A.575 1. The Director will issue a final decision denying an application for a partial abatement of property taxes imposed pursuant to chapter 361 of NRS ~~[unless]~~ *if* the Director receives ~~[written notice of approval of the application]~~ from the board of county commissioners of each county in which the facility is located ~~[or the application is deemed approved.]~~ *information sufficient to support a determination made by the board of county commissioners pursuant to subparagraph (1) or (2) of paragraph (b) of subsection 2 of NRS 701A.365.*

2. The Director will process an application for a requested partial abatement of sales and use taxes pursuant to the provisions of NAC 701A.500 to 701A.660, inclusive.

Sec. 3. NAC 701A.580 is hereby amended to read as follows:

701A.580 1. ~~Upon~~ *The Director will set a date for a hearing on an application upon* receipt of ~~the~~ :

(a) *The* documents described in NAC 701A.570 ; and ~~[701A.575, the Director will set a date for a hearing on an application.]~~

(b) *Written notice of the approval of an application from the board of county commissioners of each county in which the facility is located or a determination that the application is deemed approved unless the application is deemed approved pursuant to NRS 701A.305(2).*

2. The Director will provide notice of the hearing to:

(a) The Chief of the Budget Division of the Office of Finance;

(b) The Department of Taxation;

(c) The board of county commissioners of each county in which the project or facility is located;

(d) The county assessor of each county in which the project or facility is located;

(e) The county treasurer of each county in which the project or facility is located;

(f) The governing body of each city or town in which the project or facility is located;

(g) The Office of Economic Development; and

(h) The applicant.

~~2.~~ 3. At a hearing conducted pursuant to this section, the applicant has the burden of proving by reasonable evidence that his or her application satisfies all the requirements for eligibility for a partial abatement of taxes.

~~[3-]~~ 4. At a hearing conducted pursuant to this section, the Director or the Director's designee may ask questions of any witness.

~~[4-]~~ 5. If the Director takes any action authorized by subsection 3 of NRS 701A.365, the Director will do so at the hearing conducted pursuant to this section and will state on the record his or her reasons for so doing.

~~[5-]~~ 6. The Director will issue findings of facts, conclusions of law and a final decision regarding an application not later than 10 business days after the date on which the hearing is concluded. The Director may condition the approval of an application upon such terms as he or she determines are necessary. If the Director determines that an applicant is eligible for a partial abatement of taxes, the Director will execute an abatement agreement with the applicant as soon as practicable. The date on which the abatement agreement is executed by the Director is the date of the approval of the application for the purposes of NRS 701A.370.

**Sec. 4.** NAC 701A.590 is hereby amended to read as follows:

701A.590 1. In determining whether an applicant has established that he or she has made the capital investment required by subparagraph (2) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (2) of paragraph (e) of subsection 1 of NRS 701A.365, the Director will consider:

(a) A capital investment to be any expenditure for an asset that qualifies as "section 1245 property," as that term is defined in 26 U.S.C. § 1245, if the asset will be associated with and an integral part of the facility; and

(b) The amount paid for such an asset, including any capitalized interest, to be the amount of the capital investment for that asset. Any finance charge, tax or interest paid for the asset must not be included in the determination of the amount of the capital investment for that asset.

2. In determining whether an applicant has satisfied the requirements of subparagraph (1) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (1) of paragraph (e) of subsection 1 of NRS 701A.365, the Director will consider an employee:

(a) To be a full-time employee working on construction of the facility if the applicant establishes that the employee works or was regularly scheduled to work 40 or more hours per week engaged in activity that furthers construction of the facility.

(b) To be a resident of Nevada if the applicant establishes that the employee possesses a current and valid Nevada driver's license or a current and valid identification card issued by the Department of Motor Vehicles.

3. In determining whether an applicant has satisfied the average hourly wage requirements of subparagraph (3) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (3) of paragraph (e) of subsection 1 of NRS 701A.365, the Director will consider a person to be an employee of the facility if the applicant establishes that the person works on the site of the facility and is engaged in work that furthers the maintenance or operation of the facility. The Director will consider an applicant to have satisfied those average hourly wage requirements if the applicant establishes that the average hourly wage paid to employees engaged in the maintenance and operation of the facility meets or exceeds 110 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation as determined on a monthly basis and calculated as the total wages paid to all employees who performed maintenance and operation work on the facility for that month divided by the total number of hours worked by all employees who performed maintenance or operation work on the facility for that month, excluding management and administrative employees.

4. Except as otherwise provided in subsection 6 of NRS 701A.365, the Director will consider an applicant to have satisfied the average hourly wage requirements of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365 if the applicant establishes that the average hourly wage paid to employees engaged in the construction of a project meets or exceeds 175 percent of the average statewide hourly wage, excluding management and administrative employees, as established by the Employment Security Division of the Department of Employment, Training and Rehabilitation based on reports submitted on a weekly basis and calculated during the construction period as the total wages paid to all employees who performed construction work on the project during the course of the construction period.

5. To establish that an applicant has satisfied the requirements of sub-subparagraph (II) of subparagraph (4) of paragraph (d) of subsection 1 of NRS 701A.365 or sub-subparagraph (II) of subparagraph (4) of paragraph (e) of subsection 1 of NRS 701A.365, the applicant must establish through certification by a third party provider of insurance, or through other documentation which is approved by the Director, that the health insurance plan for an employee and the employee's dependents during the construction of the project includes, without limitation:

- (a) Emergency care;
- (b) Inpatient and outpatient hospital services;
- (c) Physicians' services;
- (d) Outpatient medical services;
- (e) Laboratory services;
- (f) Diagnostic testing services; and

(g) Except as otherwise provided in this paragraph, for an in-network provider, a minimum employer contribution of at least 80 percent of medical expenses after the employee's deductible limit is met. The Director may approve a minimum employer contribution of less than 80 percent if an employer submits a written request stating reasonable grounds for such an exception.

6. An applicant may satisfy the average hourly wage requirements in subsection 3 ~~{or 4}~~ if the applicant's employees are paid:

(a) ~~{The correct adjusted wage commencing on August 1 of each year;}~~ *At least 110 percent of the average statewide hourly wage most recently published by the Employment Security Division of the Department of Employment Training and Rehabilitation;* and

(b) If the wage has been adjusted higher, an amount equivalent to the difference between the wage the employee was actually paid and the adjusted wage for all hours worked from July 1 through July 31. A payment made under this paragraph must be made not later than 30 days after publication of the average statewide hourly wage by the Employment Security Division of the Department of Employment, Training and Rehabilitation.

7. As used in this section, "provider of insurance" has the meaning ascribed to it in NRS 679A.118.

**Sec. 5.** NAC 701A.620 is hereby amended to read as follows:

701A.620 1. Each applicant who executes an abatement agreement with the Director shall file an annual compliance report with the Director on the form prescribed by the Director. The applicant shall file the annual compliance report on or before the anniversary date of the abatement agreement ~~{}~~, *except that the Director may, upon request, grant an extension of time to file the annual compliance report which must not exceed 30 days.* The annual compliance report must include all information and documentation required by the Director.

2. The Director will review each annual compliance report as soon as practicable after receipt of the annual compliance report from the applicant. An annual compliance report which is incomplete will be rejected and shall be deemed not to have been filed. If the Director determines that additional information is required to determine whether the applicant is in compliance with the terms of the abatement agreement, the Director may request additional information from the applicant.

3. If the Director determines that the annual compliance report and any additional information requested by the Director establish that the applicant is in compliance with the terms of the abatement agreement, the Director will notify the applicant of the determination in writing and provide a copy of the notice to:

(a) The Department of Taxation;

(b) The board of county commissioners of each county in which the project or facility is located;

(c) The county assessor of each county in which the project or facility is located; and

(d) The county treasurer of each county in which the project or facility is located.

**Sec. 6.** NAC 701A.700 is hereby amended to read as follows:

701A.700 As used in NAC 701A.700 to 701A.750, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 701A.710, 701A.720 and 701A.730 have the meanings ascribed to them in those sections.