

**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 ~~for 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.

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.

~~13.1~~ 4. At a hearing conducted pursuant to this section, the Director or the Director's designee may ask questions of any witness.

~~14.1~~ 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.

~~15.1~~ 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.