

**ADOPTED REGULATION OF THE  
NEVADA ENERGY COMMISSIONER**

**LCB File No. R094-10**

Effective August 13, 2010

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

AUTHORITY: §§1-33, 35 and 36, NRS 701A.390; §34, NRS 701A.450.

A REGULATION relating to energy-related tax incentives; prescribing the process by which owners of certain facilities for the generation or transmission of electricity generated from renewable energy may apply to the Nevada Energy Commissioner for a partial abatement of certain taxes; providing for the redaction of confidential information from a pre-application or an application for a partial abatement of taxes under certain circumstances; providing for a hearing on an application for a partial abatement of taxes; authorizing certain persons and governmental entities to participate as parties in a hearing; providing for the termination of a partial abatement of taxes under certain circumstances; and providing other matters properly relating thereto.

**Section 1.** Chapter 701A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 36, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 36, inclusive, of this regulation, the words and terms defined in NRS 701A.300 to 701A.345, inclusive, and sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Abatement agreement” means an agreement executed by the Commissioner and an applicant upon the issuance of a final decision by the Commissioner that the applicant is eligible for a partial abatement of taxes.*

**Sec. 4.** *“Applicant” means an owner who submits a pre-application or an application for a partial abatement of taxes.*

**Sec. 5.** *“Application” means an application for a partial abatement of taxes and includes, without limitation, the completed application form and all supporting documents.*

**Sec. 6.** *“Facility” means:*

- 1. A facility for the generation of electricity from renewable energy in this State.*
- 2. A wholesale facility for the generation of electricity from renewable energy in this State.*
- 3. A facility for the generation of electricity from geothermal resources in this State.*
- 4. A facility for the transmission of electricity if:*
  - (a) The facility is interconnected to a facility described in subsection 1, 2 or 3; or*
  - (b) The facility contributes to the capability of the electrical grid to accommodate and transmit electricity produced from a facility described in subsection 1, 2 or 3.*
- 5. A facility for the generation of process heat from solar renewable energy in this State.*

**Sec. 7.** *“Generating capacity” means the nameplate capacity of a facility.*

**Sec. 8.** *“Owner” means a person who holds an ownership interest in a project or facility or a possessory interest in public lands, or his or her successor in interest.*

**Sec. 9.** *“Partial abatement of taxes” means an abatement of a portion of:*

- 1. Local sales and use taxes;*
- 2. The property taxes imposed pursuant to chapter 361 of NRS; or*
- 3. Both local sales and use taxes and the property taxes imposed pursuant to chapter 361 of NRS,*

*↪ authorized by NRS 701A.360 and approved by the Commissioner in a final decision issued pursuant to section 22 of this regulation.*

**Sec. 10.** *“Pre-application” means a proposal submitted pursuant to section 14 of this regulation and includes, without limitation, the completed pre-application form and all supporting documents.*

**Sec. 11.** *“Project” means all the necessary purchasing and construction that will result in a facility for which an applicant applies for a partial abatement of taxes.*

**Sec. 12.** *“Significant change” means a substantive and material change in the size or scope of a project or facility from that described in an application and includes, without limitation:*

*1. A change of more than 10 percent in:*

*(a) The size or location of the land on which the project or facility is located;*

*(b) The size of a building or ancillary structure;*

*(c) The generating capacity of the facility or the output capacity for a facility for the generation of process heat from solar renewable energy;*

*(d) The estimated cost of any building or ancillary structure or other property to which the partial abatement of taxes would be applicable;*

*(e) The amount of the partial abatement of taxes which the applicant is seeking; and*

*(f) The ownership of or any ownership interest in the project or facility.*

*2. A change in the schedule or ability to meet the time commitments established in the application.*

*3. Any similar substantive and material change in the information upon which an applicant relies in establishing eligibility for a partial abatement of taxes.*

**Sec. 13.** *“Wages” has the meaning ascribed to it in NRS 612.190.*

**Sec. 14. 1.** *To apply for a partial abatement of taxes, an applicant must submit electronically a pre-application to the Commissioner on the form and in the manner prescribed by the Commissioner.*

*2. The Commissioner will review each pre-application to make a preliminary determination of whether the applicant has provided information sufficient to demonstrate that the applicant is eligible for a partial abatement of taxes. In reviewing a pre-application, the Commissioner will assume that all information provided by the applicant is true and correct. The Commissioner may request such additional information from an applicant as the Commissioner determines is necessary. If a pre-application is incomplete, the Commissioner will specify a reasonable amount of time within which the applicant must complete the pre-application. If the applicant does not complete the pre-application within the time specified by the Commissioner, the Commissioner will reject the pre-application.*

*3. The Commissioner will make a preliminary determination of an applicant's eligibility for a partial abatement of taxes and provide written notice of the preliminary determination to the applicant not later than 10 business days after the Commissioner receives a complete pre-application from the applicant. A preliminary determination made by the Commissioner is not a final decision regarding the eligibility of the applicant for a partial abatement of taxes.*

*4. If the Commissioner makes a preliminary determination that an applicant may be eligible for a partial abatement of taxes, the Commissioner will:*

*(a) Provide to the applicant:*

*(1) Written notice that the applicant may submit an application for a partial abatement of taxes; and*

*(2) An application form; and*

*(b) Provide to the governing body of each county, city or town in which the applicant's project or facility is located:*

*(1) A copy of the pre-application submitted by the applicant; and*

*(2) A copy of the notice provided to the applicant pursuant to subparagraph (1) of paragraph (a).*

*5. If the Commissioner makes a preliminary determination that an applicant is not eligible for a partial abatement of taxes, the Commissioner will provide to the applicant written notice of the preliminary determination which must include each reason for rejecting the pre-application. An applicant whose pre-application has been rejected is not thereby precluded from submitting any new or amended pre-application pursuant to this section.*

*6. A pre-application for the construction of a facility that was commenced after July 1, 2009, may be submitted at any time, but at least 15 business days before submission of the application. After January 31, 2011, a pre-application must be submitted not later than 6 months before the applicant's anticipated first date of purchasing tangible personal property for the project.*

**Sec. 15. 1.** *In accordance with the provisions of chapter 239 of NRS, all information relating to a pre-application which is submitted to the Commissioner and which is not otherwise declared by law to be confidential is a public record. If an applicant believes that information contained in the pre-application is confidential and should be redacted and protected from publication, the applicant must:*

*(a) Submit with the original pre-application a redacted copy of the pre-application which clearly identifies each item in the pre-application that the applicant believes is confidential and should be redacted and protected from publication; and*

*(b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.*

*2. As soon as practicable after receipt of the original and redacted pre-applications, the Commissioner will, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:*

*(a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the pre-application; and*

*(b) Provide the applicant with written notice regarding the Commissioner's determination.*

*3. Not later than 3 business days after an applicant receives the written notice of the Commissioner's determination made pursuant to subsection 2, the applicant shall indicate to the Commissioner in writing with respect to each item which the Commissioner has determined may not be redacted from the pre-application:*

*(a) That the applicant consents to publication of the item; or*

*(b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the Commissioner again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the pre-application or seek an order from a court of competent jurisdiction protecting the item from publication.*

*4. If the Commissioner determines that one or more items in a pre-application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in a pre-application are confidential and must not be made public, the Commissioner will prepare a copy of the pre-application from which the items that will not be*

*made public have been redacted. The Commissioner will make public only the redacted pre-application.*

**Sec. 16. 1.** *If the Commissioner provides notice to an applicant pursuant to subsection 4 of section 14 of this regulation that the applicant may submit an application for a partial abatement of taxes, the applicant must submit to the Commissioner electronically, on the form and in the manner prescribed by the Commissioner, a request for the assignment of an application filing number. The Commissioner will assign an application filing number to the applicant not later than 2 business days after the Commissioner receives the request. The application filing number must appear on all correspondence, applications and other documents submitted by the applicant to the Commissioner.*

*2. If the applicant does not submit the application within 5 business days after the assignment of the application filing number, the application filing number expires and the applicant must request a new application filing number from the Commissioner in the manner prescribed in subsection 1.*

*3. The application filing number of an application expires if the application is rejected by the Director.*

**Sec. 17. 1.** *An applicant who has received written notice from the Commissioner that the applicant may submit an application for a partial abatement of taxes must submit electronically a complete application to the Director on the form provided by the Commissioner and in the manner prescribed by the Director and the Commissioner.*

*2. The application must be submitted not later than 5 business days after the applicant receives an application filing number pursuant to section 16 of this regulation.*

*3. Not later than 5 business days after receipt of an application, the Director shall review the application for timeliness and completeness. If the Director determines that an application is not timely filed, the Director shall reject the application and shall provide written notice of the rejection to the applicant and the Commissioner. For the purpose of determining whether an application is timely filed, the date on which the Director determines the application to be complete shall be deemed to be the date of receipt of the application. If the Director determines that an application is incomplete, the Director shall provide written notice that the application is incomplete to the applicant and the Commissioner and shall identify in the notice those items which the Director has determined are incomplete. The applicant shall provide to the Director the information necessary to complete the application not later than 5 business days after receipt of the notice that the application is incomplete. If the applicant does not provide the information within the required time, the Director shall reject the application and shall provide written notice of the rejection to the applicant and the Commissioner.*

*4. An applicant whose application has been rejected pursuant to subsection 3 may request a new application filing number from the Commissioner and submit a new application.*

*5. The Director shall provide a copy of the application to:*

*(a) The Commissioner;*

*(b) The Chief of the Budget Division of the Department of Administration; and*

*(c) The Department of Taxation.*

*6. If an application is submitted without any redactions authorized pursuant to section 18 of this regulation, the Director shall provide a copy of the application to:*

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



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

*(c) In addition to the notice required by subsection 4 of NRS 701A.360, the county treasurer of each county in which the project or facility is located;*

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

*(e) The Commission on Economic Development.*

*7. An applicant shall amend his or her application not later than 15 business days after any significant change that is applicable to the application.*

**Sec. 18. 1.** *In accordance with the provisions of chapter 239 of NRS, all information relating to an application which is submitted to the Director or the Commissioner and which is not otherwise declared by law to be confidential is a public record. If an applicant believes that information contained in the application is confidential and should be redacted and protected from publication, the applicant must:*

*(a) Submit with the original application a redacted copy of the application which clearly identifies each item in the application that the applicant believes is confidential and should be redacted and protected from publication; and*

*(b) Provide for each identified item a citation to the legal authority for and argument as to why the particular item is confidential and should be redacted and protected from publication.*

*2. The Director shall provide the Commissioner with the redacted copy of the application submitted pursuant to paragraph (a) of subsection 1 at the time that the Director provides a copy of the original application to the Commissioner. As soon as practicable after receipt of copies of the original and redacted applications, the Commissioner will, for each individual item which the applicant believes is confidential and should be redacted and protected from publication:*

*(a) Make a determination as to whether the item has been declared by law to be confidential and may be redacted from the application; and*

*(b) Provide the applicant with written notice regarding the Commissioner's determination.*

*3. Not later than 3 business days after an applicant receives the written notice of the Commissioner's determination made pursuant to subsection 2, the applicant shall indicate to the Commissioner in writing with respect to each item which the Commissioner has determined may not be redacted from the application:*

*(a) That the applicant consents to publication of the item; or*

*(b) That the applicant objects to publication of the item and indicate the legal basis, if any, and any argument in support of the applicant's objection. If the Commissioner again rejects the applicant's argument that the item should not be made public, the applicant may withdraw the application or seek an order from a court of competent jurisdiction protecting the item from publication.*

*4. If the Commissioner determines that one or more items in an application are confidential and should not be made public, or if a court of competent jurisdiction rules that one or more items in an application are confidential and must not be made public, the Commissioner will prepare a copy of the application from which the items that will not be made public have been redacted. The Commissioner will provide the redacted application to the Director as soon as practicable. Upon receipt of the redacted application from the Commissioner, the Director shall, as soon as practicable, provide a copy of the redacted application to:*

*(a) The Chief of the Budget Division of the Department of Administration;*

*(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) In addition to the notice required by subsection 4 of NRS 701A.360, 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; and*

*(g) The Commission on Economic Development.*

*5. If an applicant submits an application which the applicant believes contains information that is confidential and should be redacted and protected from publication:*

*(a) A recipient of a copy of the original application:*

*(1) Shall not make any portion of the original application public before the Commissioner has issued a written determination concerning the items which the applicant believes are confidential and should be redacted and protected from publication; and*

*(2) May make public only the information contained in the redacted application prepared by the Commissioner; and*

*(b) A recipient of a redacted application may make public only the information contained in the redacted application prepared by the Commissioner.*

*6. Any of the persons or governmental entities listed in subsection 4 may request in writing that the Commissioner additionally provide to the person or governmental entity any information which the Commissioner has determined is confidential. The Commissioner may, in his or her discretion, provide the requested information. If the Commissioner provides any such information, the person or governmental entity to whom he or she provides the information must limit access to and use of the information only to those people for whom*

*such information is necessary in the performance of their duties, and all such information provided pursuant to this subsection may not be made public.*

**Sec. 19.** *In preparing the fiscal notes required by NRS 701A.375, the Chief of the Budget Division of the Department of Administration and the Department of Taxation shall ensure that:*

*1. Any information in the application which the Commissioner has determined is confidential and must be redacted and protected from publication be viewed and used only by those persons who must have access to the redacted information for the purpose of preparing the fiscal notes; and*

*2. The published fiscal note does not contain any information that the Commissioner has determined is confidential and must be redacted and protected from publication.*

**Sec. 20.** *The Commissioner will not take any action regarding a requested partial abatement of property taxes pursuant to chapter 361 of NRS on an application submitted by an owner of a facility for the generation of electricity from geothermal resources unless the Commissioner receives written notice of approval of the application from the board of county commissioners of each county in which the facility is located. The Commissioner will process an application for a requested partial abatement of sales and use taxes pursuant to the provisions of sections 2 to 36, inclusive, of this regulation.*

**Sec. 21.** *Upon receipt of the fiscal notes prepared pursuant to NRS 701A.375 and, if required by NRS 701A.365, the written notice of approval of an application from the board of county commissioners of each county in which the facility is located, the Director shall provide the documents to the Commissioner within 2 business days.*

*Sec. 22. 1. Upon receipt of the documents described in sections 19, 20 and 21 of this regulation, the Commissioner will set a date for a hearing on an application. The Commissioner will provide notice of the hearing to:*

*(a) The Director;*

*(b) The Chief of the Budget Division of the Department of Administration;*

*(c) The Department of Taxation;*

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

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

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

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

*(h) The Commission on Economic Development; and*

*(i) The applicant.*

*2. 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. At a hearing conducted pursuant to this section, the Commissioner or the Commissioner's designee may ask questions of any witness.*

*4. If the Commissioner takes any action authorized by subsection 3 of NRS 701A.365, the Commissioner 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. The Commissioner 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 Commissioner may condition the approval of an application upon such terms as he or she determines are necessary. If the Commissioner determines that an applicant is eligible for a partial abatement of taxes, the Commissioner will execute an abatement agreement with the applicant as soon as practicable. The date on which the abatement agreement is executed by the Commissioner shall be considered the date of the approval of the application for the purposes of NRS 701A.370.*

*Sec. 23. 1. In addition to the applicant, any of the following persons or governmental entities may be a party to a hearing if the person or entity files a notice of intent to participate with the Commissioner:*

*(a) The Director;*

*(b) The Chief of the Budget Division of the Department of Administration;*

*(c) The Department of Taxation;*

*(d) The board of county commissioners of any county in which the project or facility is located;*

*(e) The county assessor of any county in which the project or facility is located;*

*(f) The county treasurer of any county in which the project or facility is located;*

*(g) The governing body of any city or town in which the project or facility is located; and*

*(h) The Commission on Economic Development.*

*2. A person or governmental entity described in paragraph (a), (b), (c) or (h) of subsection 1 that files a notice of intent to participate pursuant to this section shall file the notice with the Commissioner and provide a copy of the notice to the applicant not later than 5 business days after the date on which notice of the hearing is published. A person or governmental entity described in paragraph (d), (e), (f) or (g) of subsection 1 that files a notice*

*of intent to participate pursuant to this section shall file the notice with the Commissioner and provide a copy of the notice to the applicant not later than 15 business days after the date on which notice of the hearing is published. The notice of intent to participate must include, without limitation:*

*(a) A statement of whether the party intends to support or oppose all or any portion of the application;*

*(b) The legal arguments in support of the party's position; and*

*(c) The identification of any witnesses or evidence that the party intends to present in support of the party's position.*

*3. Except as otherwise provided in subsection 4, any person or governmental entity that files a notice of intent to participate may attend the hearing personally or may be represented at the hearing by an attorney, agent or other representative.*

*4. The Commissioner may require any person who files a notice of intent to participate to appear personally at the hearing if the Commissioner determines that the appearance will assist the Commissioner in determining whether the applicant is qualified for a partial abatement of taxes.*

**Sec. 24. 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 Commissioner 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 Commissioner will consider an employee:*

*(a) To be a full-time employee working on the 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 the 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 Commissioner 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 Commissioner 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. The Commissioner 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 150 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 weekly basis and calculated for each week during the construction period as the total wages paid to all employees who performed construction work on the project for that week divided by the total number of hours worked by all employees who performed construction work on the project for that week, excluding management and administrative employees.*

*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 that the cost of providing health insurance or a 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) 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.*

*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; 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 subsection must be made before September 1 of each year.*

*Sec. 25. 1. If the Commissioner issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of taxes, the final decision must include:*

- (a) The terms of the partial abatement of taxes;*
  - (b) A certificate of eligibility; and*
  - (c) A copy of the abatement agreement executed by the Commissioner and the applicant.*
- 2. A partial abatement of taxes approved by the Commissioner is prospective only and must not be applied retroactively to any tax imposed before the execution of the abatement agreement between the Commissioner and the applicant.*

**Sec. 26. 1.** *If the Commissioner issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of sales and use taxes, unless the certificate of eligibility and abatement agreement otherwise provide, the following tangible property which will be used exclusively for the construction, operation or maintenance of the facility qualifies for the partial abatement of sales and use taxes:*

*(a) Materials for any building that will be located on the site of the facility, including, without limitation, residential structures if employees at the facility will be required to reside at the site of the facility;*

*(b) Equipment, fixtures or furniture needed and used on the site of the facility;*

*(c) Materials for any road, parking lot or other structure that is not a building which will be located on the site of the facility;*

*(d) Materials to provide water, fuel or electrical power necessary for the facility, including, without limitation, the costs inherent in tie lines and transmission lines;*

*(e) Equipment, fixtures or other tangible items necessary for the generation of power on the site of the facility;*

*(f) Motor vehicles, if the motor vehicles are specifically purchased for exclusive use on the site of the facility;*

*(g) Power tools and motorized heavy equipment, including, without limitation, bulldozers, graders, loaders and other similar equipment, if the power tools or motorized heavy equipment is specifically purchased for exclusive use on the site of the facility and will remain on the site of the facility throughout the construction of the project and operation of the facility;*

*(h) Mobile housing or office units, if the units will be located at the site of the facility throughout the construction of the project and operation of the facility;*

*(i) Materials, equipment, fixtures, components or other tangible items located at the site of the facility and necessary for the construction and operation of a facility for the transmission of electricity; and*

*(j) Materials for any road required for access along the site of a facility for the transmission of electricity that is specifically purchased for exclusive use on such roads.*

*2. If an applicant seeks a partial abatement of sales and use taxes for any tangible property other than the property described in subsection 1, the applicant's application must specifically include a request that the Commissioner determine whether the property for which the partial abatement is requested qualifies for the partial abatement of sales and use taxes. The Commissioner shall consult with the Department of Taxation before making any determination on an applicant's request under this subsection. If the application includes a request pursuant to this subsection, the Commissioner's final decision must include a determination of whether the property qualifies for the partial abatement of sales and use taxes.*

*Sec. 27. If the Commissioner issues a final decision in which he or she determines that an applicant has satisfied all the requirements for eligibility for a partial abatement of the property taxes imposed pursuant to chapter 361 of NRS, unless the certificate of eligibility and abatement agreement otherwise provide, all real and personal property that would be taxable pursuant to chapter 361 of NRS that was purchased or leased specifically for exclusive use on the site of the facility qualifies for the partial abatement of property taxes.*

**Sec. 28. 1.** *An applicant who has executed an abatement agreement with the Commissioner shall:*

*(a) Maintain a list of the names and contact information of each person, entity, contractor and subcontractor working on the construction of the project and operation of the facility who is authorized to claim the benefit of the partial abatement of taxes approved by the Commissioner;*

*(b) Ensure that the information contained in the list maintained pursuant to paragraph (a) is complete, current and accurate;*

*(c) Ensure that the list maintained pursuant to paragraph (a) is available for inspection by the authorized employees or agents of the Commissioner, the Department of Taxation, any county in which the facility is located and vendors during normal business hours; and*

*(d) Ensure that each person, entity, contractor or subcontractor who is named on the list maintained pursuant to paragraph (a) complies with the terms of the abatement agreement.*

*2. If the applicant or any other person, entity, contractor or subcontractor fails to comply with the terms of the abatement agreement, the applicant shall pay to the State of Nevada the amount of any sales and use taxes and the amount of any property taxes abated resulting from the noncompliance.*

**Sec. 29. 1.** *Each applicant who executes an abatement agreement with the Commissioner shall file an annual compliance report with the Director on the form prescribed by the Commissioner. The applicant shall file the annual compliance report on or before the anniversary date of the abatement agreement. The annual compliance report must include all information and documentation required by the Commissioner.*

2. *The Director shall provide a copy of each annual compliance report filed pursuant to this section to the Commissioner as soon as practicable.*

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

4. *If the Commissioner determines that the annual compliance report and any additional information requested by the Commissioner establish that the applicant is in compliance with the terms of the abatement agreement, the Commissioner 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. 30. 1.** *If, at any time or for any reason, the Commissioner determines that an applicant has ceased to meet any eligibility requirement for a partial abatement of taxes or that the applicant or any other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the Commissioner will notify the applicant in writing of the determination. The notice must include, without limitation:*

*(a) A statement of the facts upon which the determination is based;*

*(b) Identification of the provisions of NRS 701A.300 to 701A.390, inclusive, or sections 2 to 36, inclusive, of this regulation or the terms of the abatement agreement with which the applicant or other person, entity, contractor or subcontractor is not in compliance;*

*(c) A time by which the applicant must respond to the Commissioner in writing;*

*(d) A time by which the applicant must remedy the noncompliance identified by the Commissioner;*

*(e) A statement that the applicant may request a hearing before the Commissioner; and*

*(f) Any other information that the Commissioner believes will aid the applicant in remedying the noncompliance identified by the Commissioner.*

*2. If an applicant requests a hearing pursuant to this section, the Commissioner will set a date, time and place for the hearing and will provide written notice of the hearing to the applicant. The Commissioner will issue written findings of fact, conclusions of law and an order after the conclusion of the hearing.*

*3. If, after a hearing conducted pursuant to this section and a reasonable opportunity to remedy any noncompliance, the Commissioner determines that the applicant has ceased to meet the eligibility requirements for a partial abatement of taxes or that the applicant or other person, entity, contractor or subcontractor has failed to comply with the terms of the abatement agreement, the Commissioner will immediately:*

*(a) Terminate the partial abatement of taxes; and*

*(b) In addition to the notice requirement of subsection 3 of NRS 701A.380, provide notice of the termination to:*

*(1) The Director;*

*(2) The Chief of the Budget Division of the Department of Administration;*

*(3) The Department of Taxation;*

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

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

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

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

*(8) The Commission on Economic Development; and*

*(9) The applicant.*

*4. The Commissioner or his or her designee may conduct an on-site inspection of the project or facility and the applicant at any time to determine if the applicant is in compliance with the abatement agreement.*

*5. The Commissioner or his or her designee, upon a request of the board of county commissioners of any county or governing body of any city or town in which the project or facility is located, may conduct an on-site inspection of the project or facility or audit of the applicant to determine if the applicant is in compliance with the abatement agreement.*

**Sec. 31. 1.** *If the Commissioner determines that a project or facility is not in compliance with the abatement agreement, the applicant shall pay to the State of Nevada the amount of sales and use taxes and the amount of property taxes abated during the period in which the project or facility was not in compliance with the abatement agreement.*

*2. Payment to the State of Nevada must be made within 60 days after the date of the written notice from the Commissioner to the applicant that payment is due. If the applicant fails timely to pay the amount of the abated taxes, the abated taxes bear interest at the rate of*



*interest most recently established pursuant to NRS 99.040 calculated as starting on the effective date of the abatement agreement.*

*3. Any amounts paid to the State of Nevada to recoup abated local sales and use taxes and property taxes must be paid by the State of Nevada to the appropriate local agency. If the State of Nevada recovers any interest, the payment to the appropriate local agency must include an apportioned share of the interest recovered.*

*4. The Commissioner may take any action which is authorized by law and which he or she believes is reasonably necessary to enforce the provisions of this section.*

*Sec. 32. The Commissioner may require that any pre-application, application, amendment, annual report or other document submitted to the Commissioner be attested to by the owner.*

*Sec. 33. 1. If an owner intends to sell, assign or otherwise transfer all or some of the owner's interest in the project or facility, the owner must:*

*(a) If the sale, assignment or other transfer will occur before the hearing regarding the owner's application, amend the application to include information regarding the proposed successor in interest and the terms and conditions of the transaction.*

*(b) If the sale, assignment or other transfer will occur after the execution of an abatement agreement, provide written proof that the successor in interest has actual knowledge of and will fully comply with the abatement agreement.*

*2. Upon receipt of any of the information required by subsection 1, the Commissioner will provide a copy of the information to:*

*(a) The Director;*

*(b) The Chief of the Budget Division of the Department of Administration;*

*(c) The Department of Taxation;*

*(d) The board of county commissioners of any county in which the project or facility is located;*

*(e) The county assessor of any county in which the project or facility is located;*

*(f) The county treasurer of any county in which the project or facility is located;*

*(g) The governing body of any city or town in which the project or facility is located; and*

*(h) The Commission on Economic Development.*

*3. A successor in interest to an owner is not eligible for or entitled to a partial abatement of taxes authorized by an abatement agreement executed pursuant to sections 2 to 36, inclusive, of this regulation until the Commissioner has received all the information required by subsection 1.*

*Sec. 34. 1. On or before the second Monday of March, June, September and December of each year, the State Controller shall deposit all money in his or her possession that is subject to the provisions of NRS 701A.450 into the Renewable Energy Fund in such an account or accounts as directed by the Commissioner. All money received by the Commissioner from the State Controller pursuant to NRS 701A.450 must be deposited by the Commissioner into one or more interest-bearing accounts in financial institutions located in Nevada. All records related to the account or accounts are public records and must be maintained in the Office of the Commissioner.*

*2. At least annually, the Commissioner will have the account or accounts audited by an independent auditor, and any report made by the auditor is a public record and must be maintained in the Office of the Commissioner.*

*3. On or before June 30 of each year, the Commissioner will disburse from the account or accounts all of the money contained therein as follows:*

*(a) Seventy-five percent must be available to be used by the Public Utilities Commission of Nevada to offset the cost of electricity to retail customers pursuant to subsection 4 of NRS 701A.450; and*

*(b) Twenty-five percent must be dedicated solely to be used by the Commissioner for the operation and staffing of his or her office and for purposes related to the Commissioner's duties and obligations pursuant to chapters 701 and 701A of NRS and sections 2 to 36, inclusive, of this regulation.*

**Sec. 35. 1.** *An interested person who wishes to petition the Commissioner for the adoption, filing, amendment or repeal of a regulation in this chapter must file with the Commissioner the original and one copy of the petition.*

*2. The petition must include:*

*(a) The name and address of the petitioner;*

*(b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed;*

*(c) The reason for the adoption, filing, amendment or repeal of the regulation; and*

*(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.*

*3. The Commissioner may refuse to review a petition which requests the adoption, filing, amendment or repeal of a regulation if:*

*(a) The original petition is not accompanied by one copy of the petition; or*

*(b) The petition does not contain the information required by subsection 2.*

4. *The Commissioner will notify the petitioner in writing of his or her decision within 30 days after the petition is filed.*

**Sec. 36. 1.** *Except as otherwise provided in subsection 4, an interested person may petition the Commissioner to issue a declaratory order or advisory opinion concerning the applicability of a statute or regulation within the Commissioner's purview or jurisdiction. The original and one copy of the petition must be filed with the Commissioner.*

2. *The petition must include:*

(a) *The name and address of the petitioner;*

(b) *The reason for requesting the order or opinion;*

(c) *A statement of facts that support the petition; and*

(d) *A clear and concise statement of the question to be decided by the Commissioner and the relief sought by the petitioner.*

3. *An interested person may not file a petition for a declaratory order or an advisory opinion concerning a question or matter that is an issue in an administrative, civil or criminal proceeding in which the interested person is a party.*

4. *The Commissioner may refuse to review a petition which requests that he or she issue a declaratory order or advisory opinion if:*

(a) *The original petition is not accompanied by one copy of the petition;*

(b) *The petition does not contain the information required by subsection 2; or*

(c) *The petition seeks a declaratory order or an advisory opinion prohibited by subsection*

3.

5. *The Commissioner may:*

*(a) Conduct an informal hearing to determine issues of fact or to hear arguments relating to the petition and may enter reasonable orders that govern the conduct of such a hearing.*

*(b) Request that the petitioner provide additional information or arguments relating to the petition.*

*(c) Issue a declaratory order or an advisory opinion based upon the contents of the petition and any material submitted with the petition.*

*(d) Consider relevant decisions that have been issued by the Commissioner which apply or interpret the statute, regulation or decision in question.*

*(e) Enter any reasonable order to assist his or her review of the petition.*

*6. The Commissioner will maintain a record of the order or opinion that is indexed by subject matter and mail a copy of the order or opinion to the petitioner within 60 days after:*

*(a) The petition is filed;*

*(b) An informal hearing is conducted; or*

*(c) Any additional information or written argument is received by the Commissioner, ↪ whichever occurs later.*

*7. The Commissioner will not render an oral advisory opinion or respond over the telephone to a request for an advisory opinion. An oral response or a response given over the telephone by a member of the staff of the Commissioner is not a decision or an advisory opinion of the Commissioner.*

**NOTICE OF ADOPTION OF REGULATION  
LCB File No. R094-10**

The Nevada Energy Commissioner adopted regulations assigned LCB File No. R094-10 which pertain to chapter 701A of the Nevada Administrative Code on August 2, 2010. A copy of the regulations as adopted is attached hereto.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
NRS 233B.066**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 701A.

**1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by e-mail to persons who were known to have an interest in the subject through an email list created from the sign in sheets of the 3 workshops and the agencies listserv as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Renewable Energy and Energy Efficiency Authority, <http://renewableenergy.state.nv.us/LawsRegs.htm> and faxed to all county libraries in Nevada and the Nevada State Office of Energy to be posted at the following locations:

**Attn: Public Posting  
Churchill County Library**  
5553 S. Maine Street  
Fallon, NV 89406

**Attn: Public Posting  
Tonopah Public Library**  
PO Box 449  
Tonopah, NV 89049

**Attn: Public Posting  
Las Vegas / Clark County Library**  
833 Las Vegas Blvd, N.  
Las Vegas, NV 89101

**Attn: Public Posting  
Pershing County Library**  
PO Box 781  
Lovelock, NV 89419

**Attn: Public Posting  
Elko County Library**  
720 Court Street  
Elko, NV 89801

**Attn: Public Posting  
Storey County Library**  
PO Box 14  
Virginia City, NV 89449

**Attn: Public Posting  
Esmeralda County Library**  
PO Box 430  
Goldfield, NV 89316

**Attn: Public Posting  
Washoe County Library**  
PO Box 2151  
Reno, NV 89505

**Attn: Public Posting**  
**Humboldt County Library**  
85 East Fifth Street  
Winnemucca, NV 89445

**Attn: Public Posting**  
**White Pine County Library**  
950 Campton Street  
Ely, NV 89301

**Attn: Public Posting**  
**Lincoln County Library**  
PO Box 330  
Pioche, NV 89043

**Attn: Public Posting**  
**Lander County Library**  
PO Box 141  
Battle Mtn, NV 89820

**Attn: Public Posting**  
**Lyon County Library**  
20 Nevin Way  
Yerington, NV 89447

**Attn: Public Posting**  
**Carson City Library**  
900 N. Roop Street  
Carson City, NV 89701

**Attn: Public Posting**  
**Mineral County Library**  
PO Box 1390  
Hawthorne, NV 89415

**Attn: Public Posting**  
**Douglas County Library**  
PO Box 337  
Minden, NV 89423

**Attn: Public Posting**  
**Nevada State Library**  
100 Stewart Street  
Carson City, NV 89701

**Nevada State Office of Energy**  
755 N Roop Street, Ste 202  
Carson City, NV 89701

Workshops were held regarding the regulations on November 20, 2009, June 21, 2010, and July 13, 2010. All of the workshops were held in Carson City (CC) that were also linked via videoconference to Las Vegas (LV). The workshop held on November 20, 2009 was also linked via video conference to Elko, Nevada. Any person who desired to make comments regarding the regulations was invited to and did participate in the workshops. In total, over nine hours of comments and discussion were held. Furthermore, written comments and reply comments were collected during and after each workshop. The written comments were made available at the website of Renewable Energy & Energy Efficiency Authority, <http://renewableenergy.state.nv.us/LawsRegs.htm>. All of the comments resulted in several changes, additions, and amendments to the draft of the regulations in an attempt to address the input received at the workshops.

On or about July 2, 2010, the Nevada Energy Commissioner issued a Notice of Intent to Act Upon a Regulation which incorporated the proposed amendments and suggestions of the parties attending the workshops.

On August 2, 2010, the Nevada Energy Commissioner conducted a hearing regarding the final language of the proposed regulation. All parties desiring to provide testimony were allowed to fully state their views and concerns regarding the proposed regulation. At the conclusion of the hearing, the Nevada Energy Commissioner announced her final determinations regarding the language of the regulation.

**2. The number persons who:**

- (a) **Attended the November 20, 2009 Workshop – CC 27, LV 4, Elko 0**  
**Attended the June 21, 2010 Workshop – CC 11, LV 12**  
**Attended the July 13, 2010 Workshop – CC 16, LV 4**  
**Attended the August 2, 2010 Hearing – CC 13, LV 9**
  
- (b) **Testified at the November 20, 2009 Workshop – 9**  
**Testified at the June 21, 2010 Workshop – 9**  
**Testified at the July 13, 2010 Workshop – 8**  
**Testified at the August 2, 2010 Hearing – 6**
  
- (c) **Submitted written comments for the November 20, 2009 Workshop – 12**  
**Submitted written comments for the June 21, 2010 Workshop – 12**  
**Submitted written comments for the July 13, 2010 Workshop – 3**  
**Submitted written comments for the August 2, 2010 Hearing - 1**

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

The comments received at the workshops and the hearing were from either representatives of the effected businesses or from the effected county and state agencies. The volume of comments was substantial and can be summarized as consisting of substantive matters related to the effect of the regulations, attempts to minimize the unintended or negative consequences of the regulation, and crafting language that, in almost all cases, was accepted by consensus of the stakeholders and participants at the workshops and the hearing. Comments, reply comments and revised regulations were made available at the website of Renewable Energy & Energy Efficiency Authority <http://renewableenergy.state.nv.us/LawsRegs.htm>.

**4. 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 August 2, 2010 and included the changes, additions, and amendments suggested at the workshops and the hearing that were acceptable to the Nevada Energy Commissioner as being within the legislative intent of the empowering statutes (NRS 701A.300 through 701A.450).

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

- (a) **Both adverse and beneficial effects.**

The Legislature, through its hearings and deliberations regarding AB 522 (subsequently codified as NRS 701A.300 through 701A.450), received testimony and evidence regarding the



impact that AB 522 would have upon small business in Nevada. The Legislature concluded that AB 522 would and was intended to have only positive impacts upon small business by encouraging and promoting small businesses to construct and operate renewable energy power generation facilities in Nevada. The mechanism chosen by the Legislature in AB 522 to effectuate its intent was to offer businesses partial abatements of sales and use taxes for three years and property taxes for twenty years for the construction and operation of such facilities.

**(b) Both immediate and long-term effects.**

The proposed regulations are intended to effectuate the Legislative intent contained in AB 522, and will not and are intended not to have any negative impact upon small businesses. The proposed regulations are and will have positive effects on small businesses that will be subject to the proposed regulations.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

This agency is a new agency created pursuant to SB 358 (2009). Going forward, the agency will need at least two staff members: an economist and an auditor. The economist will receive and process the pre-applications and application packets, determine the financial benefits of the projects to Nevada, and also coordinate the efforts between state agencies (Energy Office, Budget, Taxation and Commission on Economic Development) and local governments (where the projects will be built). The auditor will receive and evaluate tax abatement annual reports that will be filed by the facility. This agency also has a contracted legal counsel until June 30, 2011 and will need a legal counsel beyond this date to handle legal matters related to applications, abatement public hearings, contract that will be executed between the Nevada Energy Commissioner and the facility owner, tax abatement annual reports, audits and disputes. All of these positions and their associated operational costs should be funded with the renewable energy fund which was created pursuant to NRS 701A.385(1a) and NRS 701A.450.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed amendments duplicate.

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

Not applicable.

**9. 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.**

Not applicable.

**10. Is the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Nevada Energy Commissioner has determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination, the Nevada Energy Commissioner considered the legislative hearings and intent related to AB 522, and, in particular, the legislative intent of AB 522 to encourage small businesses to construct and operate renewable energy facilities throughout Nevada.

Nevada Energy Commissioner issued a determination not to issue a small business impact statement on July 12, 2010 and discussed the statement with the workshop attendees on July 13, 2010.