

PROPOSED REGULATION OF THE NEVADA ENERGY COMMISSIONER

LCB File No. R094-10

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

AUTHORITY: NRS 701A.390.

A REGULATION relating to

Section 1. NAC chapter 701A is hereby amended to add the following new language:

1. As used in this regulation, unless the context otherwise requires, the words and terms “Biomass,” “Commissioner,” “Director,” “Facility for the generation of electricity from renewable energy,” “Facility for the generation of process heat from solar renewable energy,” “Fuel cell,” “Local sales and use taxes,” “Renewable energy,” and “Wholesale facility for the generation of electricity from renewable energy” shall have the respective meanings ascribed to them in NRS 701A.305 through 701A.345.

2. “Abatement agreement” means the agreement entered into by the Commissioner and the applicant pursuant to NRS 701A.365.

3. “Applicant” means the entity or entities that are not governmental entities and that hold an ownership interest in a generating or transmission facility that is the subject of an application submitted to the Commissioners pursuant to NRS 701A.360 et seq. for a partial abatement.

4. “Application” means the form prescribed by the Commissioner and all accompanying documents by which an applicant seeks final approval for partial abatement of a project and facility.

5. “Facility” means:

(a) A facility for the generation of electricity from renewable energy as defined in NRS 701A.320;

(b) A facility for the generating of process heat from solar renewable energy as defined in NRS 701A.325;

(c) A wholesale facility for the generation of electricity from renewable energy as defined in NRS 701A.345 that is operating;

(d) A facility for the generation of electricity from geothermal resources

(d) A transmission facility if:

(1) It is interconnected to a facility that produces electricity from renewable energy or geothermal resources in this state pursuant to NRS 701A.360(2); and

(2) It will contribute to the capability of the electrical grid to accommodate and transmit electricity produced from renewable energy or geothermal resources in this state to load centers.

↪ A project becomes a facility once all construction is completed and the facility is fully operational and is operating.

6. “Owner” means the person or entity that is an applicant, and also will include a party to an abatement agreement with the Commissioner. Any successor in interest to an owner will also be considered an owner.

7. “Partial abatement” means the reduction pursuant to NRS 701A.300 through 701A.390 of a portion of:

(a) The local sales and use taxes imposed pursuant to chapter 372 of NRS,

(b) The property taxes imposed pursuant to chapter 361 of NRS, or

(c) Both local sales and use taxes imposed pursuant to chapter 372 of NRS and property taxes imposed pursuant to chapter 361 of NRS.

8. “Pre-application” means the form submitted pursuant to this regulation by which the Commissioner will make a preliminary determination whether the proposed project could be eligible for a partial abatement.

9. “Project” means all the necessary purchasing and construction that will result in a facility for which the applicant will be seeking a partial abatement. Any project or facility for which an applicant was approved for partial abatement prior to July 01, 2009 by the Nevada Commission on Economic Development are subject to NAC 360.466 through NAC 360.4775

10. “Significant change” means a change in the scope of a project or facility from that which is described in the application in excess of 10 percent, including without limitation, a change in:

(a) The size or location of the land;

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

(c) The gross or net electricity generation or transmission capacity;

(d) The estimated cost of any building or ancillary structure or other property subject to partial abatement.

(e) Information that is necessary to establish each of the elements for the entitlement to a partial abatement as set out in NRS 701A.300 through 701A.345 and in NRS 701A.365.

11. “Wages” means wages as defined in NRS 612.190.

Sec. 2. NAC chapter 701A is hereby amended to add the following new language:

1. To apply for a partial abatement regarding a project, a person must submit electronically a pre-application to the Commissioner on a form and in a manner prescribed by

the Commissioner. The pre-application form for the construction of the facility that was commenced after July 1, 2009 may be submitted at any time, but at least 15 business days before the full application packet submission, until January 31, 2011. Partial abatements approved by the Commissioner are prospective only and may not be applied retroactively to sales and use tax abatements and property tax abatements before an abatement agreement pursuant to NRS 701A.365 is executed. After January 31, 2011, the pre-application must be submitted not later than eighteen months before the applicant's anticipated first date of purchasing tangible personal property for the project. Incomplete pre-applications will be rejected and will not be reviewed by the Commissioner. All information submitted in or with a pre-application shall be presumed to be public.

2. The Commissioner shall review the pre-application, and in reviewing the pre-application will assume that all of the information provided on the pre-application is true and correct to determine whether the information is sufficient to satisfy each of the elements for eligibility for a partial abatement pursuant to NRS 701A.300 through 701A.390. As the Commissioner deems necessary, he may request information from the proponent of the pre-application additional to the information submitted in or with the pre-application. The Commissioner's determination regarding a pre-application is not a final determination regarding the eligibility of a project and is, instead, a determination as to whether the applicant will be allowed to proceed for a full and final determination regarding its eligibility for a partial abatement.

3. The Commissioner shall notify the applicant in writing of his initial determination within ten business days of his receipt of the pre-application. If the Commissioner determines that the project could be eligible for a partial abatement, he shall provide to the applicant:

- (a) Written notification that the project may proceed; and*
- (b) An application packet.*

The Commissioner shall provide to the appropriate county officials a copy of the pre-application and a copy of his written notification that the project may proceed.

4. If the Commissioner determines that the project could not be eligible for a partial abatement, he shall notify the applicant of his determination in writing, including his reason or reasons for rejecting the pre-application. The Commissioner's determination to reject a pre-application for initial determination is final and is not subject to judicial review pursuant to chapter 233B of NRS. An applicant whose application for initial determination has been rejected may:

- (a) Abandon the pursuit of a partial abatement;*
- (b) Amend his pre-application in an attempt to remedy the reasons for rejection given by the Commissioner; or*
- (c) File a new pre-application.*

5. All information contained on the pre-application shall be public. A pre-application on which any information is redacted shall be deemed incomplete.

6. Where the Commissioner has notified an owner that its project may proceed pursuant to this section, the owner shall submit to the Commissioner electronically on a form and in a manner prescribed by the Commissioner a request for the assignment of an application filing number no more than two business days before the owner intends to file its application packet, and the Commissioner or his designee will reply to the request within two business days with an application filing number. The application filing number shall appear on all correspondence, applications, or other documents provided to the Commissioner related to

that project, facility, and application. If the owner does not file its application within two business days of receiving an application filing number from the Commissioner, the application filing number shall expire and the applicant will need to request a new application filing number from the Commissioner pursuant to this paragraph.

Sec. 3. NAC chapter 701A is hereby amended to add the following new language:

1. If an applicant has received an application filing number from the Commissioner pursuant to Section 2 of this regulation, then the applicant must submit an application to the Director on a form provided by the Commissioner within two business days of receiving the application filing number. The application must be received no sooner than eighteen months before the anticipated initial date of purchasing tangible personal property for the construction of the facility and no later than three months before the anticipated initial date of purchasing tangible personal property for the construction of the facility. Applications that are not complete at the time of filing or that are not timely filed shall be rejected by the Director and will not be considered.

2. The applicant must submit the application electronically to the Director on a form provided by the Commissioner and in a method prescribed by the Director and the Commissioner.

3. Within five business days of his receipt of the application, the Director shall review the application to determine whether it is complete. If the Director determines that the application is incomplete, he shall notify the applicant and the Commissioner in writing of his determination and shall identify those items that he deems to be incomplete. The applicant shall provide the items identified by the Director to the Director within five business days after the applicant has received the notice. If the applicant fails to provide the information

necessary to render the application complete, then the Director shall reject the application and shall notify the applicant and the Commissioner in writing of his reasons for rejecting the application. The application filing number for an application automatically expires if the application is rejected. For the purposes of determining whether an incomplete application has been filed timely in compliance with subsection 1, the date on which the Director determines the application to be complete shall be deemed to be the date of receipt.

4. An applicant whose application has been rejected pursuant to subsection 3 may request a new filing number from the Commissioner and submit a new application by the manner and means provided in subsection 6 of section 2 and this section.

5. As soon as practicable, but in no case later than two business days from his determination that the application is complete, the Director shall provide the complete, unredacted application received from the applicant, including all attachments, to:

- (a) The Commissioner;*
- (b) The Chief of the Budget Division of the Department of Administration; and*
- (c) The Department of Taxation.*

6. If the application was submitted without any redactions pursuant to section 4, the Director shall also provide the complete, unredacted application received from the applicant, including all attachments, to:

- (a) The appropriate board of county commissioners;*
- (b) The appropriate county assessor;*
- (c) The appropriate county treasurer accompanied with the notice required by NRS 701A.360(4);*
- (d) The appropriate city council if the project is located within a city's boundaries; and*

(e) The Commission on Economic Development.

6. An applicant must amend its application within 15 business days of any significant change in the application.

7. As the Commissioner deems necessary, he may request information from the applicant additional to the information submitted in or with the application.

Sec. 4. NAC chapter 701A is hereby amended to add the following new language:

1. All information submitted on an application shall presumed to be public. If an applicant considers any information to be entitled to be protected from publication, the applicant shall:

(a) Submit with the unredacted copy of an application, a copy of the application in which each item in the application that the applicant believes is entitled to be protected from publication has been redacted; and

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

2. The following information shall not be redacted from an application:

(a) The location of the project and facility;

(b) The construction starting date;

(c) The intended operational starting date;

(d) The name of any entity with which the applicant has an agreement for the purchase of power that will be generated by the facility;

(e) Information necessary to establish each of the elements for the entitlement to a partial abatement as set out in NRS 701A.300 through 701A.345 and in NRS 701A.365.

3. The Director shall provide to the Commissioner the redacted copy of the application and all accompanying documents at the same time that the Director provides the complete, unredacted copy of the application to the Commissioner. The Commissioner will provide to the applicant a written determination regarding each individual item for which a claim for protection from publication as soon as practicable after his receipt of the application and accompanying documents from the Director.

4. Within three business days after it receives the Commissioner's written determination regarding an applicant's claims that items in the application should not be made public, the applicant shall indicate to the Commissioner in writing as to each item:

(a) Consent to publication of the item where the Commissioner has indicated that he believes the item should be made public, or

(b) Objection to publication of the item where the Commissioner has indicated that he believed the item should be made public, including legal citation and argument in support of the claim that the item should not be made public.

↪ As to any item identified in subparagraph (b) of this subsection, the Commissioner and the applicant may negotiate to attempt to resolve the issue. If the Commissioner and the applicant cannot resolve any such issue, the applicant may withdraw its application or seek an order of a court of competent jurisdiction protecting the item from publication.

5. If the Commissioner agrees that one or more items in an application may not be made public, or if a court of competent jurisdiction rules that one or more items in an application may not be made public, then the Commissioner shall prepare a copy of the application from which the items that will not be made public have been redacted. The Commissioner shall provide the redacted copy to the Director as soon as practicable. Upon his receipt of a

redacted copy of an application from the Commissioner, the Director shall immediately provide copies of the redacted copy to:

- (a) The Chief of the Budget Division of the Department of Administration; and*
- (b) The Department of Taxation.*
- (c) The appropriate board of county commissioners;*
- (d) The appropriate county assessor;*
- (e) The appropriate county treasurer accompanied with the notice required by NRS*

701A.360(4);

- (f) The appropriate city council if the project is located within a city's boundaries; and*
- (g) The Commission on Economic Development.*

6. Regarding any application in which the applicant claims that one or more items should not be made public, no recipient of the unredacted copy of the application may make any portion of the unredacted copy public unless:

- (a) The applicant did not file a redacted copy pursuant to this section; or*
- (b) The Commissioner has rendered a written determination that the entire unredacted copy of the application may be made public.*

↪ Where a redacted copy of the application has been provided to a recipient pursuant to this section, the recipient may only make public the redacted copy of the application.

Sec. 5. NAC chapter 701A is hereby amended to add the following new language:

1. As soon as practicable, but in no case more than 20 business days from receipt of the unredacted application from the Director:

(a) The Chief of the Budget Division of the Department of Administration shall provide to the Director, the Commissioner, and the applicant the fiscal note mandated pursuant to NRS 701A.375(1)(a); and

(b) The Department of Taxation shall provide to the Director, the Commissioner, the applicant and the appropriate county officials the fiscal note mandated pursuant to NRS 701A.375(1)(b).

↪ In preparing the fiscal notes, the Chief of the Budget Division of the Department of Administration and the Department of Taxation shall assure that the unredacted application is viewed and used only by those people necessary for the preparation of the fiscal note.

2. For a facility for the generation of electricity from geothermal resources subject to the provisions of NRS 701A.365(2), a board of county commissioners shall provide to the Commissioner its written determination regarding the facility within 30 business days of receiving its copy of the application from the Director. If the Commissioner does not receive a written determination from the board of county commissioners within 35 business days of the board's receipt of its copy of the application from the Director, the Commissioner shall deem the application before the board of county commissioners to have been denied and shall proceed accordingly.

3. Within ten business days from his receipt of the last of the two fiscal notes and, where appropriate, the written determination from the appropriate board of county commissioners, the Director shall provide to the Commissioner, the applicant, the Commission on Economic Development, and the appropriate county officials:

(a) An analysis by the Director of the energy impact of the project on the state and region served by the project; and

(b) An analysis of any of the factors in NRS 701A.365 that the Director believes to be relevant regarding the eligibility of the project for a partial abatement.

4. In preparing the fiscal notes and analyses pursuant to this section, the entity preparing the fiscal note or analysis may use any information contained in the unredacted application. The published fiscal notes and analyses will be public documents and should not contain any information that the Commissioner has determined may be redacted from the publicly available application. Where the entity creating the fiscal note or analysis determines that redacted information must be included in the published fiscal note or analysis, before publishing the fiscal note or analysis the entity shall consult with the Commissioner and the applicant to attempt to resolve the issue, which may include abstracting the redacted information so that the import of the information is made public while the substance and details that are entitled to protection from publication remain unpublished.

Sec. 6. NAC chapter 701A is hereby amended to add the following new language:

1. Upon receipt of all of the documents set out in section 5, the Commissioner shall set a date for a hearing on the application. In addition to posting the notice of the hearing in accordance with NRS chapter 241, the Commissioner shall provide a copy of the 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 appropriate board of county commissioners;

(e) The appropriate county assessor;

(f) The appropriate county treasurer;

(g) The appropriate city council if the project is located within a city's boundaries;

(h) The Commission on Economic Development; and

(i) The applicant.

2. Except as otherwise provided in this section, the hearing shall be deemed to be a contested case pursuant to NRS chapter 233B.032 and shall be conducted in accordance with NRS chapter 233B.

3. At a hearing, the applicant shall bear the burden of proving by substantial evidence that its application satisfies each of the requisites set out in NRS 701A.300 through NRS 701A.390.

4. If the Commissioner chooses to exercise his authority under either NRS 701A.365(3)(a) or NRS 701A.365(3)(b), he shall do so at the hearing of the matter and shall state on the record of the hearing his reasons for so doing.

5. At the hearing, the Commissioner or his designee may ask questions of any witness.

6. The Commissioner shall issue his findings of fact, conclusions of law, and final determination regarding an application within ten business days from the date on which the hearing is concluded. The Commissioner may condition the approval of an application upon such terms as he deems necessary under the circumstances of that application. If the Commissioner determines that an application is eligible for a partial abatement, the Commissioner shall execute an abatement agreement pursuant to NRS 701A.365 with the applicant as soon as practicable on a form provided by the Commissioner. Partial abatements approved by the Commissioner are prospective only and may not be applied retroactively to any property purchased before an abatement agreement pursuant to NRS 701A.365 is executed.

7. A party may seek judicial review of the findings of fact, conclusions of law, and final determination by the Commissioner in accordance with NRS chapter 233B.

Sec. 7. NAC chapter 701A is hereby amended to add the following new language:

1. The Commissioner may issue subpoenas for the production of witnesses, documents or papers in furtherance of his review of an application. The Commissioner shall issue subpoenas for the production of witnesses, documents or papers, in accordance with statutory provisions, at the request of any party to a hearing.

2. Witnesses appearing pursuant to a subpoena must receive expenses and witness fees in the amounts and under the same circumstances as prescribed by law for witnesses in civil actions. The expenses and fees must be paid in full by the party at whose request the witness is subpoenaed except that the Commissioner need not pay expenses or witness fees for any witness that he subpoenas himself and not at the request of a party.

3. Subpoenas must be served in the same manner as prescribed by law for the service of subpoenas in civil actions. If any person fails to comply with a subpoena within 10 days after its issuance, the Commissioner may petition the district court for an order of the court compelling compliance with the subpoena.

4. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there to show cause why he has not complied with the subpoena. A certified copy of the order must be served upon the person.

5. If it appears to the court that the subpoena was regularly issued by the Commissioner, the court shall enter an order compelling compliance with the subpoena. Failure to obey the order constitutes contempt of court.

Sec. 8. NAC chapter 701A is hereby amended to add the following new language:

1. Any of the following may be a party to a hearing if it or he provides a notice of intent to participate to the Commissioner:

(a) The Director;

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

(c) The Department of Taxation;

(d) A representative for the appropriate board of county commissioners;

(e) The appropriate county assessor;

(f) The appropriate county treasurer;

(g) The appropriate city council if the project is located within a city's boundaries; and

(h) The Commission on Economic Development.

↪ Any party to the hearing may attend personally or may attend through the presence of an attorney or other designee.

2. The notice of intent to participate must be filed with the Commissioner with a copy to the applicant within three business days of the date that the notice of hearing was transmitted and shall contain:

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

(b) Any legal argument in support of the party's position; and

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

3. The Commissioner may request that any of the entities listed in subsection 1 appear at the hearing of the matter if she deems that the entity's appearance will assist him in assessing the merits of the application.

Sec. 9. NAC chapter 701A is hereby amended to add the following new language:

1. To determine the amount of capital investment required pursuant NRS 701A.365(1)(d)(2) and NRS 701A.365(1)(e)(2) for a partial abatement:

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

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

2. The cost of providing health insurance for an employee and his dependents on the construction of the project for the purposes of NRS 701A.365(1)(d)(4)(II) and NRS 701A.365(1)(e)(4)(II) where the health insurance plan provides for basic medical and hospital care, shall include at least:

(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) Minimum employer contribution of at least 80% of medical expenses after the employee's deductible limit is met.

↳ The Commissioner will consider a medical insurance plan provided to an employee by a labor union, a Native American tribe, or any similar source where the plan provided meets or exceeds the requirements of this subsection.

3. An employee will be considered a full-time employee on the construction of a project for the purposes of NRS 701A.365(1)(d)(1) and NRS 701A.365(1)(e)(1) where he works forty or more hours per week engaged in activity that furthers the construction of the project.

4. An employee will be considered an employee of the facility for the purposes of NRS 701A.365(1)(d)(3) and NRS 701A.365(1)(e)(3) where he works on the site of the facility engaged in work that furthers the maintenance or operation of the facility.

5. An employee will be considered a resident of Nevada for the purposes of NRS 701A.365(1)(d)(1) and NRS 701A.365(1)(e)(1) where that employee has a Nevada driver's license or a Nevada identification card issued by the Department of Motor Vehicles.

6. The average hourly wage paid to employees engaged in the construction of a project for the purposes of NRS 701A.365(1)(d)(4) and NRS 701A.365(1)(e)(4) be determined on a weekly basis and shall be 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 .

7. The average hourly wage paid to employees engaged in the maintenance and operation of the facility for the purposes of NRS 701A.365(1)(d)(3) and NRS 701A.365(1)(e) (3) shall be determined on a monthly basis and shall be calculated for each reporting period 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.

Sec. 10. NAC chapter 701A is hereby amended to add the following new language:

1. If the Commissioner determines that a project and facility qualifies for partial abatement of sales and use taxes, he shall issue terms of abatement and a certificate of eligibility for the abatement pursuant to NRS 701A.370(2). Unless the Commissioner states otherwise in the certificate of eligibility, the following tangible property shall be subject to the partial abatement of sales and use taxes on a project:

(a) Materials for any building that will be located on the site of the facility which may include 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 that will be located on the site of the facility;

(d) Materials to provide water, fuel, or electrical power necessary for the facility, including the costs inherent in tie lines or transmission lines; and

(e) Equipment, fixtures, or other tangible items necessary for the generation of power pursuant to the application which will be located on the site of the facility.

2. The following tangible property shall not be subject to partial abatement of sales and use taxes:

(a) Motor vehicles, unless the vehicles are specifically purchased for exclusive use on the site of the facility or for necessary ingress or egress from the facility;

(b) Power tools and motorized heavy equipment such as dozers, graders, loaders, and other similar equipment, unless the tools or equipment were specifically purchased for exclusive use on the site of the facility and will remain on the site of the facility throughout the construction and operation of the facility;

(c) Mobile housing or office units, unless the units will be left at the site of the facility throughout the construction of the project and operation of the facility.

3. If an applicant seeks partial abatement of sales and use taxes for any tangible property that is not listed in either subsection 1 or subsection 2, it shall seek a ruling from the Commissioner regarding the specific tangible property at issue. In ruling on whether specific tangible property is or is not within a partial abatement for sales and use taxes, the Commissioner shall be guided by the legislative intent underlying NRS 701A.300 through 701A.390 and whether the inclusion of specific tangible property is consistent with and would further that legislative intent. The Commissioner shall issue a written determination regarding in the inclusion or exclusion of specific tangible property from the partial abatement of sales and use taxes and shall provide a copy of his determination to:

(a) The applicant;

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

(c) The Department of Taxation;

(d) A representative for the appropriate board of county commissioners;

(e) The appropriate county assessor; and

(f) The appropriate county treasurer.

↳ The determination by the Commissioner that specific tangible property is included or excluded from partial abatement of sales and use taxes is final and is not judicially reviewable pursuant to NRS chapter 233B.

4. The real property subject to partial abatement shall be constituted of:

(a) The site of the facility;

(b) Any necessary buildings, roads and parking lots on the site of the facility; and

(c) Any land contiguous to the site of the facility that is necessary and integral to the operation of the facility.

5. The owner shall maintain a list of all of its entities, subentities, contractors, and subcontractors working on the construction of the project and operation of the facility who are entitled to the benefit of the partial abatement for the project or facility. The owner is responsible to assure that:

(a) The list is current at all times;

(b) The list is available to the Commissioner, the Department of Taxation, the appropriate county officials, and vendors at all times during normal business hours and that it can verify whether a particular entity is on the list via telephone, e-mail, or other means of communication during normal business hours;

(c) Any entity, subentity, contractor, or subcontractor entitled to the benefit of the partial abatement applies the partial abatement only to purchases of property that qualify for the abatement.

6. If any entity, subentity, contractor, or subcontractor misuses the partial abatement, the owner shall repay to the State of Nevada the amount of sales and use taxes and the amount of property taxes abated resultant from the misuse of the partial abatement by the entity, subentity, contractor, or subcontractor. The repayment to the State of Nevada shall be made within 60 days from a written notice from the Commissioner to the owner that repayment is due. If the owner fails to timely repay the amount of the abated taxes, the Commissioner or the Department of Taxation may file an action in the First Judicial District Court of the State of Nevada. If the Commissioner or the Department of Taxation prevails in such an action, the owner shall pay the attorney's fees and costs incurred by the Commissioner or the Department of Taxation in the pursuit of the action or in any subsequent attempt to collect the sums due. Any judgment for repayment of the abate taxes shall also bear interest at the statutory rate calculated as starting on the effective date of the abatement agreement. Any amounts paid to or recovered by the state that recoup abated local sales and use taxes shall be paid by the state to the appropriate local agency. If the state recovered any interest, the payment to the appropriate local agency shall include an apportioned share of the interest recovered.

Sec. 11. NAC chapter 701A is hereby amended to add the following new language

1. For every project approved for a partial abatement, the owner shall file an annual compliance report with the Director on a form provided by the Commissioner. The annual compliance report shall be filed no later than the anniversary date of the abatement agreement between the Commissioner and the owner pursuant to NRS 701A.365. The annual compliance report shall contain all required documentation or evidence sought on the form by the Commissioner to assist the Commissioner in determining whether the project is in compliance with the abatement agreement.

2. The Director shall provide to the Commissioner a copy of an annual compliance report as soon as practicable, but in no case more than twenty business days after the Director receives the annual compliance report. The Commissioner shall review the annual compliance report submitted for a project or facility within 20 business days from his receipt of the annual compliance report from the Director. Incomplete annual compliance reports will be rejected and will be deemed not to have been filed. If the Commissioner determines that he needs additional information to analyze or assess the annual compliance report, he shall notify the owner in writing and the owner shall provide the additional information. If the Commissioner determines that the annual compliance report establishes that the owner is in compliance with its abatement agreement, it shall notify the owner of his determination in writing and provide the copy of notice to Department of Taxation and appropriate local government.

3. If the Commissioner determines that the operation of a project or facility is not in compliance with the abatement agreement, whether based upon an annual compliance report, the investigation of a complaint lodged with the Commissioner, or a compliance review conducted by the Commissioner, then the Commissioner shall notify the owner of the project or facility in writing that the Commissioner considers the project or facility not to be in compliance with its abatement agreement. The notice shall contain:

(a) A statement of the facts upon which the Commissioner bases his conclusion;

(b) An identification of the provisions of Nevada law or the abatement agreement that the Commissioner believes have been violated;

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

(d) A time by which the owner must remediate the issues identified by the Commissioner;

(e) Notification that the owner may request a hearing before the Commissioner; and

(f) Any other information that will assure that the owner remediates the issues identified by the Commissioner.

4. If the owner indicates that it desires a hearing, the Commissioner shall set a date, time, and place for the hearing and shall notify the owner of such in writing. The hearing shall be deemed a contested case and shall be held in accordance with NRS chapter 233B. The Commissioner shall issue written findings of fact, conclusions of law, and an order within 20 business days from the final date of hearing.

Sec. 12. NAC chapter 701A is hereby amended to add the following new language:

1. If the Commissioner determines that a project or facility is not in compliance with its abatement agreement, then the owner shall repay to the State of Nevada the amount of sales and use taxes and the amount of property taxes abated from the effective date of the abatement agreement through the date that it is determined that the facility or project is determined not to be in compliance with its abatement agreement.

2. The repayment to the State of Nevada shall be made within 60 days from the written notice from the Commissioner to the owner that repayment is due. If the owner fails to timely repay the amount of the abated taxes, the Commissioner may file an action in the First Judicial District Court of the State of Nevada. If the Commissioner prevails in such an action, the owner shall pay the attorney's fees and costs incurred by the Commissioner in the pursuit of the action or in any subsequent attempt to collect the sums due. Any judgment for repayment of the abate taxes shall also bear interest at the statutory rate calculated as starting on the effective date of the abatement agreement.

3. Any amounts paid to or recovered by the state that recoup abated local sales and use taxes and property taxes shall be paid by the state to the appropriate local agency. If the state recovered any interest, the payment to the appropriate local agency shall include an apportioned share of the interest recovered.