

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Fourth Session  
May 23, 2007**

The Committee on Commerce and Labor was called to order by Vice Chair Marcus Conklin at 2:20 p.m., on Wednesday, May 23, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Marcus Conklin, Vice Chair  
Assemblywoman Francis Allen  
Assemblyman Bernie Anderson  
Assemblyman Morse Arberry, Jr.  
Assemblyman Chad Christensen  
Assemblywoman Heidi S. Gansert  
Assemblyman William Horne  
Assemblywoman Marilyn Kirkpatrick  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman David R. Parks

**COMMITTEE MEMBERS ABSENT:**

Assemblyman John Ocegüera, Chair (Excused)  
Assemblywoman Barbara E. Buckley (Excused)  
Assemblyman Settlemeyer (Excused)



**GUEST LEGISLATORS PRESENT:**

Assemblywoman Debbie Smith, Washoe County Assembly District No. 30

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Committee Counsel  
Kevin Powers, Senior Principal Deputy Legislative Counsel  
Dave Ziegler, Committee Policy Analyst  
Judith Coolbaugh, Committee Secretary  
Gillis Colgan, Committee Assistant

**OTHERS PRESENT:**

Michael Alastuey, representing Clark County  
Renny Ashleman, Chairman, State Public Works Board; and representing  
the City of Henderson  
Joe Johnson, representing the Toiyabe Chapter of the Sierra Club  
Robert L. Crowell, representing Boyd Gaming Corporation and  
Echelon Resorts  
Kevin Sullivan, Senior Vice President, Boyd Gaming Corporation and  
Echelon Resorts  
Trevor Hayes, representing Parkway Center and the Molasky Companies  
Robert Tretiak, representing International Energy Conservation  
Terry Graves, representing the World Jewelry Center  
Daniel Parks, Chief Financial Officer, World Jewelry Center  
Michael Crowe, Past President, Las Vegas Regional Chapter,  
United States Green Building Council  
Tim Crowley, representing MGM Mirage

**Vice Chair Conklin:**

[Roll called.] I am opening the continuation of the hearing on Assembly Bill 621.

**Assembly Bill 621: Makes various changes in the provision of tax abatements and exemptions based upon the use of energy and repeals certain prospective energy requirements for public buildings. (BDR 58-1512)**

Yesterday, we discussed the prospective approach to the green energy projects and issues. Today, we are going to look at our current situation and discuss possible policy alternatives.

**Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:**

Today's discussion on this legislation and the green building issue will be a little more difficult. The retrospective issue has been looming for a while. Several weeks ago, our fiscal staff became aware that the funding for our Distributive School Account (DSA) was being significantly affected by the ramifications of Assembly Bill No. 3 of the 22nd Special Session, which was convened at the end of the 73rd Session. You have heard the background information several times. Mrs. Kirkpatrick and I received an innocuous email asking if we might like to look at the Leadership in Energy and Environmental Design (LEED) situation and help resolve the issues. It has been a tremendous learning experience, and it has also been somewhat dismaying. We realized we were faced with a paper trail and a process that was difficult to put together. It was a moving target.

There is no doubt that we have had unintended consequences from the passage of A.B. No. 3 of the 22nd Special Session. In order to deal with this problem, it was necessary to separate the issues. We needed to consider what happened between 2005 and now, and what will happen in the future. Today we would like to discuss how we might resolve the retrospective issues. In testimony yesterday, we heard project developers express concern about the potential cut in their abatements that were defined in regulations and in A.B. No. 3 of the 22nd Special Session. I need to remind you how much money we are talking about. For example, a project costing \$38 million is eligible for a LEED standard with its accompanying sales and property tax abatements. If the abatements for that project continue under the provisions of A.B. No. 3 of the 22nd Special Session, the total abatement can amount to \$100 million. This situation defies logic. Good public policy is not a windfall; it is about implementing the policy as it was intended.

Is it in the best interests of Nevadans to have public money financing a private project? That is the scenario when we abate dollars over and above the cost of the LEED construction costs. If we continue the abatements, public funding for education, transportation, and other needs will be severely shortchanged. We do not see how it will be possible to go forward with these abatements in place. These issues concern us all, and our citizenry deserve to have the problem remedied.

We understand the positive impact these developments will eventually have on our economy and in the community when they are completed. When the projects are up and running, there will be thousands of new employees and a corresponding increase in revenues. We appreciate the many contributions these businesses make to our communities as well as their desire to work with us on the green building issue. The fact that they are willing to construct

buildings that will be better for the environment, their employees, and customers is commendable. However, along with the development comes the obligation for the State and local governments to provide education, roads, and public service projects for those projects and the employees they hire. Therefore, we have to balance the incentives we offer. We are talking about a projected loss of hundreds of millions of dollars of revenue. It is obvious this program is out of control.

It is our duty and obligation to set things right, and we hope the industry will continue to work with us to help us arrive at an acceptable resolution. Records show that the sales tax deferral in A.B. No. 3 of the 22nd Special Session was intended to provide a "jump start" to the green building program. It is definitely off the ground. There are as many as 50 private projects in Nevada listed on the LEED registry. Mrs. Kirkpatrick will present information that will assist the Committee in understanding the complex nature of the events that have ensued since we adjourned in 2005. It will also show the difficulty in identifying projects that are recommended for possible "grandfathering in." After working with staff and industry representatives, we feel there is a way to proceed. We will present a solution in the proposed amendment. I would be happy to answer any questions.

**Vice Chair Conklin:**

Thank you for the introduction. Are there any questions?

**Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:**

I have provided a handout ([Exhibit C](#)). It is titled "LEED: A Series of Events and Scenarios," and it provides a retrospective time line of events that have taken place since 2005, when A.B. No. 3 of the 22nd Special Session was signed into law. At that time, only two companies had applied with the Office of Energy for LEED incentives. On December 23, 2005, a letter was sent out by the Department of Taxation detailing how LEED standards and sales tax abatements would be implemented. After that, three more companies applied for LEED incentives, and the Tax Commission held a meeting to slightly change the rules based on the intent of the original letter that was sent out in December 2005. On June 28, 2006, the Division of Economic Development adopted LEED regulations, and later in September 2006, the Commission on Economic Development adopted regulations on how the LEED property tax abatement standards would be implemented.

By December 14, 2006, seven companies had filed for LEED incentives and within another two weeks, after temporary regulations were put in place by the Director of the Office of Energy for new LEED projects, five more companies applied. In March 2007, new regulations were adopted by the Office of Energy

for determination of LEED eligibility, and two more companies applied for LEED incentives. On March 28, 2007, the Department of Taxation issued two Sales and Use Tax Deferral Certificates, and on April 9, 2007, the Tax Commission issued recommendations for Memorandums of Understanding (MOUs) for a few companies. A proposed regulation from the Commission on Economic Development was adopted to create a standard for property tax abatement in April 2007. Following that, two more MOUs were issued by the Department of Taxation, and on April 23, 2007, the Department of Taxation issued a Sales and Use Tax Deferral Certificate.

It is important to look at this time line because the Legislature was notified that there could be a potential problem in the middle of March 2007. Discussions ensued to develop methods to slow down the process. However, a lot of activity continued to move forward. In May 2007 companies were still applying for LEED incentives. Earlier this Session on May 2, 2007, Senate Bill 567 was passed by both Houses to suspend A.B. No. 3 of the 22nd Special Session and allow the Legislature time to evaluate the situation. Unfortunately, the Governor vetoed that legislation. Since that time, six more companies have applied for LEED incentives. On May 7, 2007, the Tax Commission reconsidered how the MOU would work, and as of this week, four more companies have filed for LEED incentives. Their status is on hold. We took into consideration who filed what paperwork based on the regulations that were adopted and put in place. After reviewing all the data, we asked for an attorney's opinion, and Brenda Erdoes, Committee Counsel, will present the Legal Division's findings.

**Vice Chair Conklin:**

Are there any questions on the time line? In A.B. No. 3 of the 22nd Special Session, there was a sales tax abatement that expired December 31, 2005. Is that correct?

**Assemblywoman Kirkpatrick:**

That is correct.

**Vice Chair Conklin:**

On the third page of your handout, the time line data indicates that Sales and Use Tax Deferral Certificates were still being issued two years later. Is that correct?

**Assemblywoman Kirkpatrick:**

That is correct.

**Vice Chair Conklin:**

On that same page, it shows new regulations adopted on March 3, 2007. Were old regulations in place prior to these?

**Assemblywoman Kirkpatrick:**

On June 28, 2006, the Office of Energy and the Commission on Economic Development simultaneously adopted regulations. The new regulations that came forward after that were temporary. The temporary regulations were to be in place within a 120-day period. There were new regulations adopted at this Monday's Legislative Commission meeting. I appealed a regulation that was brought forth. The new regulations specifically deal with LEED incentives, and with the type of abatement that would be put in place. The Commission on Economic Development put provisions in their regulations to make a portion of a silver certificate eligible for other incentives. The regulatory process continued to move forward, even though we asked that the process slow down.

**Vice Chair Conklin:**

On June 28, 2006, the Commission on Economic Development and the Office of Energy adopted joint regulations. Is that correct?

**Assemblywoman Kirkpatrick:**

They established separate regulations. That information was included in the binders that we gave this Committee last week.

**Kevin Powers, Senior Principal Deputy Legislative Counsel:**

We have prepared a legal opinion letter ([Exhibit D](#)), which has been distributed to the Committee. We were asked two questions:

Do the existing tax abatements and exemptions enacted by Sections 6 and 7 of A.B. No. 3 of the 22nd Special Session create any contractual or vested rights with respect to persons who have applied for tax abatements or exemptions, or who have been approved to receive the tax abatements or exemptions?

If the Legislature were to amend or repeal the existing tax abatements and exemptions enacted by Sections 6 and 7 of A.B. No. 3 of the 22nd Special Session, could persons who have applied for the tax abatements or exemptions, or who have been approved to receive the tax abatements or exemptions, successfully assert the doctrine of estoppel against the State due to their reliance on the existing tax abatements or exemptions?

After doing exhaustive research and looking at a considerable number of United States Supreme Court cases, we have concluded that these general laws, Sections 6 and 7 of A.B. No. 3 of the 22nd Special Session, did not create any contractual or vested rights for any of the applicants or for others who qualified for the tax abatements and exemptions, regardless of how much their investment was, or would be, in order to comply. When the Legislature enacts tax abatements and exemptions through general laws, there is the assumption that one Legislature does not intend to bind a subsequent Legislature. A general statute makes state tax policy; it does not make state contracts. There are United States Supreme Court cases of precedence that support this opinion.

**Vice Chair Conklin:**

Are there any questions?

**Assemblyman Anderson:**

While there are no contractual relationships, do consumers still have a reasonable expectation that they can rely on the State to follow through on the performance of mandated regulations and laws?

**Brenda Erdoes, Committee Counsel:**

There is a reasonable expectation of what consumers believe will happen. We were asked to analyze the law on the issue, and what are the legal rights of consumers. It is up to the Legislature to determine what those expectations are and how to proceed.

**Assemblyman Anderson:**

Can consumers reasonably expect the Legislature to revise and change mandated figures, and that it will deal with these same issues in succeeding sessions?

[There was no immediate answer.]

**Assemblyman Horne:**

At the time the tax abatement or exemption was applied for, there was no performance on the project by the applicant. However, after approval, there is performance on the part of the applicant. In the latter instance, does the actual performance circumvent the rule that the State is not bound by a contractual obligation? Can consumers make an argument that they relied on the intent of the State when the legislation was passed?

**Kevin Powers:**

To answer your question, we need to take a step back. If we were dealing with private parties, then issues of performance and contract rights would take precedence. We are not dealing with private parties, but with general legislation, so there is no contract to begin with. The people who received the tax abatements and performed in good faith on the project assumed the Legislature would continue the tax abatements. The law presumes they understand that a subsequent Legislature can, and often does, repeal or amend the law. Even if we were to address this issue in terms of a bargain relationship, part of the bargain is that the consumer understands the law may change in the future. The law recognizes people have that understanding and are going forward on that understanding and belief. That is part of the arrangement between those consumers who have applied and are qualified by the State.

**Assemblyman Horne:**

In simplistic terms, you are saying we know you already have it, but we are taking it away. As opposed to, we know we told you that you could have it, but we are not going to give it to you. Is that correct?

**Kevin Powers:**

That is correct. We were asked a constitutional question. The answer is the Legislature can enact any piece of legislation as long as it is not prohibited by the *Nevada Constitution*. A tax abatement enacted by general law does not create contractual or vested rights. Therefore, there is no constitutional impediment to the Legislature changing the law. However, as a policy matter, it is up to the Legislature to determine whether those who applied and qualified have a reasonable expectation that the law will continue. That is a policy decision, and the Legislature is free to determine how they want to proceed.

**Vice Chair Conklin:**

Are there other questions?

**Assemblywoman Kirkpatrick:**

I would like to make a comment.

**Vice Chair Conklin:**

We will clarify for the record that you and Mrs. Smith did an enormous amount of work on this issue. You are a member of this Committee and the bill does not have your name on it. We will extend to you and Mrs. Smith the right to ask a question or comment.



**Assemblywoman Kirkpatrick:**

I would like to read from a letter issued by the Department of Taxation regarding the eligibility of an applicant's project. We did not distribute this letter because persons and/or companies were specifically named. The letter states:

By issuing this determination, the Department of Taxation has not undertaken to determine or to inform any persons of any actions, events, or changes in the law occurring after the date hereof which may affect the determination of the expressed above. Please be advised that this determination letter may be appealed.

This disclaimer indicates the law could change, and the person would not continue to be granted the tax abatement or exemption rights. The person is taking a risk, but the Department of Taxation, in their due diligence, put that clause in the letter to ensure that the party receiving the letter knew the law could be changed.

**Vice Chair Conklin:**

Mr. Horne, are you satisfied or would you like an additional follow-up to your question?

**Assemblyman Horne:**

No, the language makes sense, and it does imply the Legislature's right of repeal. I am satisfied.

[Mr. Ziegler asked the Committee Secretary to distribute a proposed amendment ([Exhibit E](#)) to the Committee. It was submitted by Dino DiCianno, Executive Director, Department of Taxation. Neither Mr. Ziegler nor Mr. DiCianno testified.]

**Vice Chair Conklin:**

Are there any other questions?

**Assemblywoman Smith:**

Mrs. Kirkpatrick is going to walk the Committee through the provisions of the proposed amendment to the bill. One of the important considerations you will notice in the recommendations of the mock-up bill is that no persons and/or companies are named. This is about policy, and the strict interpretation of A.B. No. 3 of the 22nd Special Session as defined by the Legal Division. We need to determine how we will proceed with a retrospective review of the sales tax abatements. As you know from other hearings, the sales tax abatements are not included in the prospective approach. Mrs. Kirkpatrick will explain those provisions.

**Assemblywoman Kirkpatrick:**

I have distributed copies of the proposed amendment in a mock-up of the bill ([Exhibit F](#)).

**Vice Chair Conklin:**

While we are waiting for the copies to be distributed, I would like to recognize and thank Assemblymen Bobzien, Denis, Gerhardt, Pierce, and Womack for being in attendance.

**Assemblywoman Kirkpatrick:**

Sections 1 through 3 are the parts that pertain to A.B. 621. Section 1 permits the Office of Energy to adopt a LEED Green Building Rating System for purposes of determining eligibility for tax abatements. Five years may be too long a time period for deciding how far we retrospectively consider projects for the LEED standards. We want to change that provision to two years. Two points of additional credit for energy conservation are required in Section 2, subsection 2 (c) to meet Nevada LEED standards.

Section 3 grants authority to the Director of the Office of Energy to determine a partial abatement on a portion of the taxes imposed. We exempted tax monies designated for education from the tax abatement. In Section 3, subsection 1, the language states there must be a significant change in the scope of the project, instead of just a change of 10 percent or more after the date of application, in order to determine the application expiration date. We removed the "sunset" clause. It was eliminated because we felt it was fair to allow businesses to move forward with the process instead of coming back every two years to revisit green building rating systems. We left in the independent audit provision to ensure energy efficiency. We added the County Assessor and County Treasurer to the list of people who will receive a partial abatement application, so local governments can plan ahead.

Yesterday, we heard testimony about the cost of actually building a LEED project. We heard the analogy of the black and green boxes. The black box will be built no matter what. To make the black box green, the additional construction costs have to be determined. In order to adopt sound numbers, rather than arbitrarily selecting a number, we looked at other states and determined a 2 percent figure for the silver level was comparable to the cost of a building actually going to a green standard. The figure is minus the taxes for education. The gold level would be 5 percent, and the platinum level, 8 percent. The Office of Energy will provide the program's oversight.

Subsection 5 specifies that the Office of Energy will set the parameters for determining the scope of change in a project. We are trying to centralize the

entire LEED process under one agency rather than continuing with the current fragmentation of authority under various state agencies. The Office of Energy has already made improvements on the LEED application. The Legislature's strictest intent concerning how the sales taxes are to be handled is stated in Sections 14 and 15. In Section 15, subsection 4, the language reads the Commission on Economic Development will no longer grant any partial abatement of taxes. Section 16 repeals *Nevada Revised Statutes* (NRS) 361.0685, NRS 361.0775, NRS 361.079, and NRS 701.217. On page 19, Section 3 specifies that the components of A.B. No. 3 of the 22nd Special Session are repealed. On page 20, Section 2, subsection 2 (a), there is reference to the State Public Works Board. The previous bill required all public buildings to be green. Currently, there are two projects under consideration. These projects will be part of a pilot program to determine if green buildings will be a cost-effective investment. The State can have all green buildings, but without someone to maintain them and keep that green certification current, the up-front cost of spending the extra money to make the building green may not be repaid over the life of the building.

**Vice Chair Conklin:**

Are there any questions?

**Assemblywoman Allen:**

My question is about the removal of the "sunset" clause. Can you clarify the rationale for its removal? In actuality, everything has a "sunset" clause because the Legislature can change anything that is already in the law, except matters that have constitutional prohibition.

**Assemblywoman Kirkpatrick:**

Provisions could change with successive Legislatures, but the changes would have to be vetted by all members of both Houses. We have evaluated both sides of the issue. Having a set "sunset" clause might interfere with companies' ability to obtain loans for the necessary capital investment from financial institutions. A "sunset" clause removes any guarantee that the law will remain in place. It was a concession we made. The issue will be left for future Legislatures to consider.

**Vice Chair Conklin:**

Generally speaking in the business community, if there is a law with a "sunset" clause in it, it is considered to be a temporary provision. If the "sunset" clause is removed, future Legislatures will always have the opportunity to come back and reconsider the law. A "sunset" clause means a law automatically dies unless the Legislature reconsiders its provisions. It is a subtle nuance, but it is

difficult to encourage people to do something when provisions are considered to be temporary.

**Assemblyman Anderson:**

Will the Office of Energy automatically do an annual audit of the LEED buildings to verify there is still entitlement to the abatement?

**Assemblywoman Smith:**

The intention is to have a report provided to the Office of Energy. When a building is certified, there is no further certification required by LEED standards. If we require a report during the abatement period, it will help us start gathering information about whether or not this type of program is viable. We can determine what is being accomplished and how much energy is being saved.

**Assemblyman Anderson:**

How will the Legislature know that the abatement is still justified and if the quality of the workmanship on the project is acceptable? There is also the question of determining if the building is being adequately maintained to conserve energy and thus justify the tax abatement. What happens if the project starts out at the silver level and the company wants to go to the gold or platinum level of certification? How does the Legislature verify the building is meeting the LEED standards?

**Assemblywoman Kirkpatrick:**

Assembly Bill No. 3 of the 22nd Special Session does not require an energy audit. Through the required report, the State will be able to determine if these projects are cost-effective enough for the State to continue to provide the tax abatement incentives. The intent of this legislation is to save energy within our State. The director of the Office of Energy has agreed to compile the reported information into one report and bring it to the Legislature. Within a few years, we should be able to determine if this program is actually cost-effective to the citizens of the State. If a company wishes to move to a higher level, it will have to go through the LEED's processing to get the certification. We will obtain further clarification for you if necessary.

**Assemblyman Anderson:**

I am concerned that we need to verify if a building is still meeting the LEED standards.

**Assemblywoman Kirkpatrick:**

Currently, the Office of Energy does not have the necessary staff. Their budget request for more positions was cut in half. We can work with the Office of Energy this afternoon to see if we can address your concern.

**Vice Chair Conklin:**

On page 1, line 17, the language will change from two years to five. How will this time period change impact a company that applies for tax abatement in 2007, but 2010 is the completion date of the project? When the project was conceived, the 2007 LEED standards were in effect, but by the end of the construction period they would no longer be the current standards.

**Assemblywoman Kirkpatrick:**

The proposed amendment contains a provision that the project has to move forward within 36 months. The LEED certification process takes about five years, but two years is a long enough period to determine if the standard is adequate. The Office of Energy said it will evaluate any new ideas in energy conservation on an annual basis.

**Vice Chair Conklin:**

I understand the 36-month period, but my concern is some projects are not completed within that time period. Would the building still be covered under LEED standards?

**Assemblywoman Kirkpatrick:**

Once a company files with LEED, they do so under a certain criteria. They would not be adversely affected by new LEED provisions.

**Vice Chair Conklin:**

The original standard is the one that applies. Is that correct?

**Assemblywoman Kirkpatrick:**

Yes.

**Assemblywoman Smith:**

This language was a compromise based on yesterday's testimony that five years was too long. Bringing it back to two years seemed more reasonable, and it puts the provision on a legislative cycle, which would permit possible changes.

**Vice Chair Conklin:**

Are there any other questions?

**Assemblywoman Allen:**

What provisions are there in this bill to prevent a similar situation from happening in the future?

**Assemblywoman Kirkpatrick:**

By having all the activities under one agency, coordination and oversight will be centralized. There is also another piece of legislation in place that changes the way regulations are adopted. This bill would require regulations that are being introduced, even if they are temporary, to be heard first by the Legislative Commission. Then, the agency would have to bring them back to the Legislature for final approval. This method will clarify the legislative intent. The Office of Energy has the proper paperwork and clear-cut regulations in place, and they are organized and ready to move forward. The sales tax is not included in this bill, so that will not be an issue. A company would have to be certified first to receive the property tax abatement. The energy audit will provide additional oversight, and the 36-month provision will give local governments time to plan for anticipated changes in tax revenues. This proposed amendment makes the process tighter and more controlled. We are being proactive with this legislation, instead of being reactive.

**Vice Chair Conklin:**

Are there any other questions? In order to manage our time before the next floor session, how many people need to get on the record in support of the bill? We will have a show of hands. We also need a show of hands for those in opposition. We are limiting further testimony to only the proposed amendment and the retrospective portions of the bill. The prospective portions of the bill were discussed yesterday.

**Michael Alastuey, representing Clark County:**

Our support is based on an initial and quick review of the proposed amendment. The retrospective language to clarify the applicability of the time lines in A.B. No. 3 of the 22nd Special Session with respect to the sales tax component of the bill is supported. We also understand the connection between the cost-basis and the percentage levels of the abatements. We have significant concerns on the distribution of financial responsibility for the tax abatements. It seems to more heavily impact local governments, but it should be handled at the state level. If it is a state program, the State should be a more significant financial participant. We appreciate the County Assessor and County Treasurer being included in the advisory loop. We have an amendment to offer ([Exhibit G](#)). I have not prepared copies for mass distribution because the language was developed during this hearing. I will submit a copy for the record later. We are requesting that before a partial abatement is granted, "all applications, correspondence records of deliberations, and financial and technical analyses received, generated, or compiled" be turned over to the county commission and/or city council with jurisdiction over the building's location. Additionally, we request that the partial abatement not be approved unless the local government approves the abatement request at a regularly

scheduled public meeting of the local governing board. This language will increase the involvement of local government entities. We look forward to working on further iterations and improvements to the bill.

**Vice Chair Conklin:**

It is optimistic to consider additional iterations at this late juncture in the process.

**Michael Alastuey:**

I respect the legislative work ethic and know a great deal can be accomplished in a little time.

**Vice Chair Conklin:**

Are there any questions?

**Michael Alastuey:**

With your permission, we will provide the amending language.

**Vice Chair Conklin:**

You need to make sure the Committee and Mrs. Smith receive copies of your proposed amendment.

**Michael Alastuey:**

I will personally deliver them.

**Vice Chair Conklin:**

Are there others in support?

**Renny Ashleman, Chairman, State Public Works Board; and representing the City of Henderson:**

I have been working with the Senate Commerce and Labor Committee in my capacity as Chairman of the State Public Works Board. I would like to offer an amendment to the bill ([Exhibit H](#)). It addresses the issue of minimum achievement of the points required in the categories of Energy and Atmosphere and Water Efficiency. The amendment will carry through the enhancements to ensure actual improvements in water and energy conservation at all levels from silver to platinum. Some of the points required are achievable with less energy efficiency than the State would like to have. In the mock-up bill, the scheduling of steps in the certifying process has been improved. I join Mr. Alastuey in his request to have notification of applications transmitted to local governments.

**Vice Chair Conklin:**

Are there any questions?

**Joe Johnson, representing the Toiyabe Chapter of the Sierra Club:**

We have just reviewed the amendments and we support most of the language. We would like to address the issue of the 2 percent amount of the abatement. In reality, it is only 1 percent of the total tax. It is an extremely small amount, and we consider it to be a non-abatement.

**Vice Chair Conklin:**

We had testimony yesterday that it would be cost-effective to go without any abatement. Did you disagree with that?

**Joe Johnson:**

Yes. This is an abatement of the tax, not the abatement of the additional costs. There is a difference between zeroing out the amount and using 1 or 2 percent. This issue requires further consideration.

**Vice Chair Conklin:**

Are there any questions? Are there others in support? Seeing none, we hear from the opposition and those testifying from a neutral position.

**Robert L. Crowell, representing Boyd Gaming Corporation, and Echelon Resorts:**

We are testifying in reluctant opposition to the proposed amendment to A.B. 621. We disagree with our legal colleagues on their legal opinion. It is not our intention to debate that opinion today because it is our continuing desire to work with this Committee and the Legislature to craft an appropriate bill that will allow the LEED program to go forward in Nevada. The amendment before you today effectively precludes the participation of Boyd Gaming and Echelon Resorts.

**Kevin Sullivan, Senior Vice President, Boyd Gaming Corporation, and Echelon Resorts:**

Our company remains committed to working with the Legislature to develop a good compromise on this bill. We understand there were unintended consequences created with the passage of A.B. No. 3 of the 22nd Special Session. We are here to represent a developer's perspective on the legislation, and we did apply the provisions of the original legislation in good faith. In my previous testimony, I suggested a 2 percent amount for a percentage of construction costs; others suggested 5 percent or more for the silver level. These percentages were for the incremental construction costs for the LEED green building program.

There were two promised tax credits in A.B. No. 3 of the 22nd Special Session. The first was the sales tax abatement at 5.75 or 7.75 percent; the other was the property tax abatement. The sales tax abatement will be removed with this



proposed legislation. In our case, the sales tax abatement was 37 percent of the total incentive available to us. The remaining 63 percent is the benefit received by the property tax abatement. The prior benefit of the property tax abatement under A.B. No. 3 of the 22nd Special Session was 35 percent for 10 years on land and improvements. This bill unintentionally changes that to a 2 percent abatement, versus the prior 35 percent. Forty-four percent of property taxes go to the schools. If you remove that amount from the 2 percent, the tax abatement benefit we would receive is about 1 percent. With this amendment to A.B. 621, the incentive for developers to develop LEED green projects has been reduced by 99 percent.

**Vice Chair Conklin:**

The sales tax abatement was for companies who applied in the early time frame of the initial passage of A.B. No. 3 of the 22nd Special Session. Was your company included in that?

**Kevin Sullivan:**

Yes, we were. We have a tax opinion letter going back to 2006, but we do not have a tax deferral certificate. In our opinion, under A.B. No. 3 of the 22nd Special Session, we could wait to the end of the project, get our LEED certification, then apply and receive our rebate of sales taxes paid. We did apply for the tax deferral certificate before the law was passed. If we had that, we would be exempt from paying on an as-you-go basis. Our application for the deferral certificate was held up. Unless the law changes, we would go to the end of the project then receive our tax abatement. We were told that under A.B. No. 3 of the 22nd Special Session it is not a good idea to wait until the end of the project because no county wants to give back money. We realized that made sense, so a company needed to negotiate an MOU with the State. We took the opinion letter, which we already had, to the bank to show that our project qualified for the tax abatement which would be received at the end of the project.

**Vice Chair Conklin:**

Are there any questions?

**Trevor Hayes, representing Parkway Center and the Molasky Companies:**

We are testifying from a neutral position. When A.B. No. 3 of the 22nd Special Session was passed, our company had already been considering developing land in downtown Las Vegas into the Molasky Corporate Center. We were the first company to complete the majority of the certifying process to meet LEED standards. When the company received the December 22, 2005, letter outlining the certificate of deferral process, we had already been told on November 4, 2005, by the Department of Taxation that a Certificate of Resale

would be sufficient documentation to receive the sales tax exemption. When the Office of Energy issued their letter on December 19, 2005, saying the company would be exempt from the sales tax, our company was not included in the time line handout. We have been overlooked a few times because we were the first company to apply.

There has been a lot of discussion about how much it costs to qualify for the LEED program. The Molasky project expects to reach the gold level. To meet that standard, the green construction costs are 8 percent more for a total of \$8 million on a \$100 million project. The total sales tax exemption expected was about \$3 million. The total property tax abatement would amount to approximately \$1 million under the old standard of 50 percent over a 10-year period. The company expected about \$4 million back on their additional \$8 million in construction costs to meet the LEED standards.

If either of these abatements is changed, it does not mean the developer will just have to pay a higher tax. There are additional costs. We have a construction loan that within 30 to 45 days will become a permanent loan. J. P. Morgan, our financier, has already sent us a letter saying if A.B. No. 3 of the 22nd Special Session is repealed or altered that they will have to refinance the loan with less favorable terms. It will cost our company hundreds of thousands, if not millions, more to pay the higher costs on the refinanced loan. I would be happy to answer any questions.

**Assemblywoman Smith:**

I wanted to clarify the fiscal impact on that particular project. It was not an accurate depiction because you have a government entity as a tenant, which makes the taxing mechanism different.

**Trevor Hayes:**

The Southern Nevada Water Authority is one of the major tenants in that building. Fifty percent of the projected property taxes would not have been paid because of that exemption. That would make the number \$2 million instead of the \$3.6 million figure. The total is still off by \$1.6 million. Mrs. Smith is correct that \$1 million would have been made up by the tenant's tax exempt status.

**Vice Chair Conklin:**

Are there other questions?

**Robert Tretiak, representing International Energy Conservation:**

We bring to the table a different perspective than the developers, which you heard in the prior testimony. We are a company that finds and identifies the types of existing buildings that are energy inefficient. We support periodic verification of a building's energy efficient systems and recommissioning as necessary to bring the building back to the original LEED standards they qualified under. The numbers that have been presented are for new construction. The figures are dramatically different when an existing building is being upgraded to qualify for LEED standards. Retrofitting a building for energy efficiency is more costly than the amount required for new construction. Many parties who want to do retrofitting do not have the capital necessary to make the investment, so they use third-party leasing agreements. Financiers partially rely on rebates to qualify a company for a lease agreement on a building that meets LEED standards. It is important to maintain consumer confidence in the legislative process. People will be reluctant to accept future incentives if the retrospective ones are not honored.

**Vice Chair Conklin:**

Are there any questions?

**Terry Graves, representing the World Jewelry Center:**

I have submitted a copy of our testimony ([Exhibit I](#)). Mr. Parks and I represent the World Jewelry Center (WJC) located in the Union Park redevelopment area of downtown Las Vegas. We will continue to work with the Committee to find a resolution to the issues.

**Daniel Parks, Chief Financial Officer, World Jewelry Center:**

We echo the comments of Mr. Crowell and Mr. Sullivan. We have submitted a letter showing the WJC time line for obtaining the project's LEED incentives ([Exhibit J](#)). I would like to point out some of the differences the WJC has from the other projects in the LEED program. We are concerned about the provisions in Section 3.1(a), which would eliminate the possibility of the project receiving any LEED-related tax abatements for projects that also receive other tax abatements. We intend to apply for Tax Increment Financing (TIF) through the Redevelopment Agency. We view that application as a separate set of criteria for an entirely different incentive program.

Furthermore, TIF monies are not available to the State or other local jurisdictions to meet their other budget needs. Eighteen percent of the TIF funds are held for use in low-income housing. The remaining 82 percent goes to the Redevelopment Agency. Fifty percent of that amount can be shared with redevelopment projects. The reason for the incentive is to encourage developers, like ourselves, to bring projects into a redevelopment area to

generate new jobs. We anticipate adding 3,000 to 3,500 new, well-paying, non-gaming jobs to the marketplace through the development of the WJC. It will also be an entirely new industry in the State. The WJC will be a business-to-business center for the jewelry industry worldwide. It will also contain a retail center and a museum that will be open to the public.

I fully understand this Committee's task in trying to balance the environmental tax incentives with the other pressing needs of the state budget. With this bill as amended, the balance will be tipped to a point where the tax incentives become virtually meaningless. Unfortunately, it may effectively shutdown the LEED-related tax incentive programs. We designed the WJC to be LEED-certified from the onset. It is actually a mandate within the Union Park redevelopment area to achieve LEED-certified projects. Our goal with the WJC was to achieve the silver level or higher. Currently, we are on track to do that. We have asked our consultants and engineers to redesign the construction to let us know the construction cost savings if we have to fall back to a less environmentally friendly and less expensive structure.

**Vice Chair Conklin:**

Are there questions?

**Terry Graves:**

I was asked a difficult question yesterday on the issue of double-dipping created by coupling the TIF benefits with the LEED tax incentives on the WJC project. When I came to Las Vegas about 40 years ago, the downtown Las Vegas area was dying, and it has continued to die. Every mayor has made an effort to figure out how to save the downtown area. This is the first time I have had any optimism that there is a chance to save the area. The question now is can we attract more projects like the WJC to change the downtown Las Vegas area and convert it into a prosperous business entity. Up to this point, the projects and businesses relocating to the area have experienced one failure after another. This project represents an opportunity for the downtown Las Vegas area to rejuvenate. We need to step back from the issue of double-dipping and see what the potential is for the future of downtown Las Vegas. Redevelopment works because a blighted or economically obsolete area also has depressed property values. Therefore, the tax returns from those properties are also lower.

**Vice Chair Conklin:**

Are there any questions?

**Michael Crowe, Past President, Las Vegas Regional Chapter, United States Green Building Council:**

I want to answer three questions asked in this hearing. The United States Green Building Council (USGBC) will support the audit system, and it is necessary for whatever abatement method is successful. Version 2.2 of the LEED program is currently in effect. If you submit an application today it would be under Version 2.2. A year and a half ago, Version 2.1 was in effect. Once an application has been submitted, you are judged by the requirements of that program version for the life of the process. It can take one to five years to arrive at project completion because it depends on the size of the project. I do not understand the time frame issue, or the significance of a two- or five-year period.

**Vice Chair Conklin:**

In the original bill, under Section 2, subsection 2 (a), there was a provision that stated all the provisions covered, except as otherwise provided in subsections 2 (b) and (c), have to be in the LEED system for five years. The amendment decreases that time period to two years, so that newer innovations in the LEED program can be included in the standards. It makes the standard tougher.

**Michael Crowe:**

I agree. It will make the standard tougher. Whatever version of LEED is in effect when an application is made is the system by which a project is judged. Therefore, I do not see the need for the specified time period.

**Assemblywoman Kirkpatrick:**

This bill will preclude applicants from going back and forth in selecting which version of the LEED standard they choose to be under. It will permit inclusion of new LEED programs as they are developed.

**Michael Crowe:**

If a program came out called LEED for homes, it would be in place for two years. Is that the intent?

**Assemblywoman Kirkpatrick:**

That is correct.

**Michael Crowe:**

I support the audit, and the LEED system would make that audit simpler. The LEED rating system includes the extended commissioning process, which checks to make sure the building works as well as it was designed. It would be an aid in completing the audit.

**Vice Chair Conklin:**

Are there any questions?

**Tim Crowley, representing MGM Mirage:**

We are in opposition to the amending language that was presented today. The MGM Mirage prides itself on being a good corporate citizen. We are proud to be partners with the State, and we strive to work on resolving state policy issues. However, we are analyzing the legal opinion and the new proposal that have been presented, and we are struggling to find ways to come to a compromise. We understand that time is of the essence and our people are working at finding common ground.

**Vice Chair Conklin:**

Are there any questions? Is there anyone else wishing to speak on the amendment to A.B. 621? Seeing none, we are closing the hearing on A.B. 621. It is the chairman's request to move the bill to a subcommittee for further consideration. The members of the subcommittee will be Mrs. Kirkpatrick, Mrs. Smith, and Dr. Mabey. Mrs. Kirkpatrick will chair the subcommittee, which will meet this evening at 7:00 p.m. The Committee expects a full report and final recommendation by tomorrow. The full Committee will meet tomorrow to review the subcommittee's recommendation.

[The meeting was adjourned at 4:01 p.m.]

RESPECTFULLY SUBMITTED:

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Judith Coolbaugh  
Committee Secretary

APPROVED BY:

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Assemblyman Marcus Conklin, Vice Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** May 23, 2007

**Time of Meeting:** 2:20 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
AB 621	C	Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1	"LEED: A Series of Events and Scenarios"
AB 621	D	Kevin Powers, Senior Principal Deputy Legislative Counsel	Legal Opinion Letter
AB 621	E	Dino DiCianno, Department of Taxation	Proposed Amendment
AB 621	F	Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1	Proposed Amendment and Mock-up Bill
AB 621	G	Michael Alastuey, Clark County	Proposed Amendment
AB 621	H	Renny Ashleman, State Public Works Board	Proposed Amendment
AB 621	I	Terry Graves, World Jewelry Center	Testimony
AB 621	J	Daniel Parks, World Jewelry Center	Time Line