

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

**Seventy-Fourth Session
May 26, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 9:38 a.m., on Saturday, May 26, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman David R. Parks
Assemblyman James Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblyman Morse Arberry, Jr. (excused)
Assemblywoman Barbara E. Buckley (excused)
Assemblyman Chad Christensen (excused)
Assemblywoman Heidi S. Gansert (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Debbie Smith, Washoe County Assembly District No. 30

Minutes ID: 1449



STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Earlene Miller, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Renny Ashleman, Chairman, State Public Works Board
Trevor Hayes, representing the Molasky Companies
Rose McKinney-James, representing Clark County School District
Michael Alastuey, representing Clark County
Pamela Vilkin, President, Las Vegas Regional Chapter, United States
Green Building Council
Robert Crowell, representing Boyd Gaming and Echelon Resorts
Kevin Sullivan, Senior Vice President, Boyd Gaming and Echelon Resorts
Jeff Fontaine, Executive Director, Nevada Association of Counties
Kyle Davis, Policy Director, Nevada Conservation League
Joe Johnson, representing the Toiyabe Chapter of the Sierra Club
Robert Tretiak, representing International Energy Conservation
Terry Graves, representing World Jewelry Center
Dan Parks, representing World Jewelry Center
Robert Elliott, Vice President, Government Affairs, MGM Mirage
Terry Hickman, Executive Director, Nevada State Education Association

[The roll was called and a quorum was present.]

Chair Ocegüera:

We will open 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)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District 1:

We had a subcommittee meeting that ended with no recommendation. Assemblywoman Smith and I continued to work and believe we have agreed on good policies. I will go through the mock-up of the bill ([Exhibit C](#)) and then Mrs. Smith will address it. Section 2 allows the standards to be adopted by regulation through the Office of Energy. We feel it is important that most of the records stay within the Office of Energy where they can be compiled. On page 2, the first subsection, we wanted Leadership in Energy and Environmental Design (LEED) to have its program in place for at least two years

before we allowed Nevada to adopt it, so we could see how it would work in our State. We know LEED is developing new ideas such as LEED for homes, but we felt that Nevada was not ready for that, nor could we afford it. We worked with Senator Townsend on energy efficiency because we think it is important if we are going to give out abatements. In Section 2, subsection c, we felt this was a fair criterion so we could meet the levels of energy efficiency that are Nevada's goals. We defined what a home meant, so as LEED progresses, Nevada can be fiscally responsible. In Section 3, we thought it was important to have a centralized location. If we are going to have abatements, we need to be sure the schools are not affected. We required a program to be completed within 48 months. That will help local governments plan. There is a waiver provision. We required a developer to go back to the Office of Energy if there is more than a 10 percent change in square footage. The director of the Office of Energy would have to show good cause for extending it. We considered getting a time line from the contractor to see how he is proceeding. We included a requirement that the Office of Energy notify the other departments so the Department of Taxation, the county assessor, the county treasurer, and the Commission on Economic Development would be able to proceed.

Subsection 3 allows for the type of abatement and energy efficiency we feel will be beneficial to our State. We compromised on energy efficiency. The silver level will be at 25 percent, the gold level will be at 30 percent, the platinum level will be at 35 percent, and we made sure the schools remained financially whole. We defined how we would determine the criteria, the scope of the project, and how the taxes would be calculated. Everything would start in the Office of Energy, which would be responsible for sending out the information to the other departments. As the developer applied for the property tax abatement, he would have direction on which way to go. Section 15 of the mock-up acknowledges the entities that incorporated the provisions of Assembly Bill No. 3 of the 22nd Special Session into the projects within the time line established by the statute for the sales and use tax exemption. The sales tax exemption expired December 31, 2005. The other portions of the bill were already in statute.

Chair Ocegüera:

Are there any questions?

Assemblyman Anderson:

In Section 3, subsection 3 of the mock-up, where you have the 25, 30, and 35 percent of the taxes, if we set those lower, would we lessen the economic impact? Was there any discussion about that in your subcommittee?

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

We discussed the various levels, and as you know, we have been working with different groups over the past few weeks to determine what is appropriate and what protects the State fiscally. We decided on a number that would provide an incentive without providing a windfall and would give an incentive based on the actual cost for providing the LEED construction.

Assemblyman Anderson:

One of the concerns I raised earlier was verification and the assurance of re-verification. I want to make sure a formal mechanism of reporting is required.

Assemblywoman Kirkpatrick:

As LEED is developing some new products, the silver level is going to have a much higher standard than it currently does. The Office of Energy is not ready to conduct the audit we talked about. We hope that next session we can require an audit. It is a high priority for us to know that the buildings are maintaining their efficiency level.

Assemblywoman Smith:

We spent a lot of time in the subcommittee on this subject. It became apparent that the situation with LEED is bigger than originally anticipated, and the Office of Energy will require additional staff to monitor compliance. We talked to the director of the Office of Energy and decided that it is going to be a few years before we will be at that point with our projects. Only one project, the Patagonia Project, is complete and has the abatement. The others will still be in the process, so we felt that this was one area where we had the time to develop a process.

Chair Ocegura:

Are there other questions?

Assemblyman Horne:

On page 3, Section 3, line 41, it says the abatement terminates upon any determination by the director that the building or other structure has ceased to meet the equivalent of the silver level. Is there any provision for a cure?

Assemblywoman Kirkpatrick:

Could we refer that to our legal counsel?

Brenda Erdoes, Committee Counsel:

There is no specific period for a cure. I think it is intended that the Office of Energy's regulations would provide for this. Any appeal would go under the

administrative code. If you want to provide for a certain period of cure, we could do that.

Chair Oceguera:

Mrs. Smith, would you like to talk about the fiscal impacts?

Assemblywoman Smith:

Section 15 deals with some of the retrospective issues and legal implications with which we were concerned. We wanted to be fair to those who had participated in this process since A. B. No. 3 of the 22nd Special Session. The provisions on line 31, page 16, allow for a project that had a preconstruction or construction contract executed on or before December 31, 2005, to continue to receive the sales tax abatement. Those contractors who fall into that category will have both their property tax and sales tax abatements continue. Everyone else will be in the prospective path. Retrospectively, it will cut the fiscal impact to the State by approximately 50 percent. This was developed in a policy manner that was constructed in a fair way. The prospective fiscal note is much less. We do not have any numbers because we do not know how many projects we have. It allows the projects to have the incentive to recover the cost to build to LEED standards and not receive a windfall. We feel this process will serve us well.

Chair Oceguera:

Are there any questions for Mrs. Smith?

Assemblyman Anderson:

What was the date change you said might be necessary?

Assemblywoman Smith:

On page 16, line 32, the date should be December 31, 2005. The significance of that date from the original bill was that we already had the time line built in and this coincides with that.

Chair Oceguera:

Are there other questions?

Assemblywoman Smith:

I did not mention that we had a suggestion, and I think it would be a good policy for the Office of Energy to request a fiscal note on these projects as they are developing their process so local governments know what the impact will be.

Chair Ocegüera:

Are there any other questions from the Committee? Thank you for your hard work. Are there others wishing to testify on A.B. 621?

Renny Ashleman, Chairman, State Public Works Board:

In Section 13, I may not have properly communicated our concerns. This section requires the Public Works Board to comply with a set of standards that have not been adopted yet. We are in the midst of very expensive planning and construction cycles, and Section 13 is not workable as written. We are now designing and constructing projects—some of which go back as far as 1999, 2001, and 2003—that were not designed under LEED standards, but were developed under energy and water efficiency standards. The redesign of those projects would be extremely expensive. We have buildings in mid-construction which would be very expensive to change. There have also been bills passed this session to build prisons, and those bills did not contemplate LEED construction. It is not a question of energy efficiency. We have been working with the money committees to impose proper energy and water standards on our buildings. For our current building cycles, we have LEED-compliant planning and construction money. The old plans and the emergency prison buildings will not work within these standards. This contemplates a standard that has not been adopted. We cannot wait until they hold hearings to keep our planning and construction cycles going, and we certainly cannot halt construction. On page 15, line 19, it would be preferable to put in nationally recognized standards for energy and water efficiency or any combination of those standards. We are still going to be building some buildings that are not going to be technically amenable to the other parts of the green concept. Probably the best change would be to omit Section 13. Let me work with the Assemblywomen on it.

Chair Ocegüera:

I am surprised by this because I am sure the Assemblywomen have tried to listen to everyone's concerns.

Renny Ashleman:

I have met with them, and I understood that Section 13 was to be removed from the bill.

Brenda Erdoes:

This was a mistake in drafting. The State requested two pilot programs for this interim, but did not want the programs to be a requirement. I will correct it and run that by Mr. Ashleman.

Trevor Hayes, representing the Molasky Companies:

This Body passed a legislation in 2005 that has been wildly successful; however, everyone has recognized that it created some unintended consequences. The two Assemblywomen who have headed this have made a tireless effort to listen to the concerns of the Committee, the schools, local government, and those of us involved in the building process. The Molasky Company is one of the pioneers in green building and adopting LEED standards. This bill is an outstanding effort, and I want to thank them both very much for their hard work. I think this strikes a delicate balance between the companies that adopted the green standards early and the needs of the State. There are two things I would like to point out. Section 15, subsection 5, addresses products and materials purchased on or after January 1, 2006, and before January 1, 2010. We were one of the early adopters of this program and started making purchases in the window of October 1, 2005, to December 31, 2005, and hope that the Committee would see fit to expand the window back to that period of time for the purchases we thought were exempt. Section 15.5 discusses taxes on a building or other structure and is the same as on page 18, subsection 5(a). We request that it include all property taxes. Our building opens in two months and it is difficult for us to go back and find new revenues. That simple change would allow this to be more feasible for us. Our company will still take a considerable hit over what we were expecting, but we would be more than satisfied with that.

Chair Ocegueda:

Are there any questions for Mr. Hayes?

Assemblyman Mabey:

Would you go over your last point about the building?

Trevor Hayes:

I understand that the only taxes which will be abated will be for the building and structure, but not the land. I request that it include the entire property tax.

Assemblyman Mabey:

That would raise the abatement considerably.

Trevor Hayes:

Yes, there would be somewhat of a raise.

Assemblywoman Smith:

The language concerning sales tax in Section 15 is complicated, because we are dealing with language from A.B. No. 3 of the 22nd Special Session. We can have legal counsel clarify it, but the original abatement from October 1, 2005

through December 31, 2005, is still there. In this language, we deal with January 1, 2006, and forward.

Chair Oceguela:

Ms. Erdoes, could you clarify that?

Brenda Erdoes:

I would like permission from the Committee to clean up the dates in the mock-up. That is clearly the intent, and if we can make this clearer to the reader, we could do that. We would like to make the changes match the period of October 1, 2005, to December 31, 2005, throughout the bill.

Chair Oceguela:

I am sure that satisfies you, Mr. Hayes.

Rose McKinney-James, representing Clark County School District:

I am here to thank the Committee, and particularly the subcommittee, for the recognition of the fiscal impact that the prior bill would have had on the Clark County School District and to indicate our strong appreciation for the language in this bill that would keep us whole. I discussed with Assemblywoman Smith a very minor, technical amendment suggested by our bond council. She indicated that it is reflected in the mock-up. I would like to clarify where that is in the mock-up.

Brenda Erdoes:

Are you talking about where it takes all of the tax rates for the school?

Rose McKinney-James:

Yes, specifically the reference to *Nevada Revised Statutes* (NRS) 387.195, et cetera. We want to make sure that we clarified the distinction between the definitions related to property tax versus school financing.

Brenda Erdoes:

It is clear that is the intent. I think on page 4, line 26, that is what we are doing. I will check and make sure that is what we have.

Michael Alastuey, representing Clark County:

I want to acknowledge the Herculean efforts of Assemblywomen Smith and Kirkpatrick. In my three decades in this building, I do not think I have seen anybody work harder on anything. We appreciate the acknowledgement of the need for a fiscal note for the State as well as local governments. In carving out the schools, the State has pretty much carved itself out of the impact. At this point it is difficult, if not impossible, to estimate fiscal impacts in the future.

Projects that were in the pipeline may or may not qualify for the new pipeline. We need to consider the impact to Clark County at the 35 percent abatement level, which would be approximately \$1.7 million for each \$1 billion in projects. In terms of volume, with \$19 billion-worth of projects in progress, the estimate provided to this Committee earlier would be roughly a \$32 million fiscal impact to county and county-related entities. This is hypothetical. I am willing to support the inclusion of a fiscal note in the bill.

Assemblyman Mabey:

Would you give me those numbers again?

Michael Alastuey:

This is an example only. Earlier in the weeks leading up to this, there were estimates of property tax and sales tax impacts on the schools and local governments that were circulated. Those estimates were prepared by a consultant to the Legislature whose work is well respected. At the time, a snapshot of those projects, in total project costs, totaled \$19 billion. I do not know the composition of those project costs. If all were to be certified at the platinum level, then as much as \$30 million or more per year could be felt by Clark County. This is an example only and is not to single out those projects individually or as a group. It is important to balance benefit versus cost. We believe the inclusion of a fiscal examination process will enable a balancing of the benefits of energy conservation, environmental sensitivity, and the cost to the public in a transparent way as opposed to the way it was introduced to you this session.

Pamela Vilkin, President, Las Vegas Regional Chapter, United States Green Building Council:

As it stands now, LEED for existing buildings is changing its name within the next six months. I would like to go on record, so you know that. They are focusing on spotlighting more energy efficiency in LEED for existing buildings. It will be a new version with a new name by approximately October 2007. In Section 2, subsection 2(a), Leadership in Energy and Environmental Design encompasses all of the programs, but I do not know if that was the intent. It takes about two years for have a program come out of pilot program status with the United States Green Building Council (USGBC). As a State, are we are going to wait an additional two years? If you exclude all pilot projects, it would be sufficient. We, the USGBC in Nevada, will offer all of the assistance necessary for the Office of Energy to proceed. We will clarify points, educate, and give them the tools to move forward successfully.

I would also like to clarify the breaking out of the land. When you go through a LEED project, the first category is sustainable sites. Under sustainable sites,

there is a significant amount of money spent on the site work. For example, the Patagonia building did an amazing amount of work with pervious concrete which cleanses storm water; so when it goes back into the Truckee River, the water is as clean as it can possibly be. I understand the fiscal impact, but it is a large part of the LEED process. I do not see core and shell construction in here and am concerned about that.

Chair Ocegüera:

Are there any questions?

Robert Crowell, representing Boyd Gaming and Echelon Resorts:

We would like to thank this Committee and particularly Assemblywomen Smith and Kirkpatrick for their hard work. Our earlier testimony on this matter indicated that we had three criteria in mind for this issue. The first criterion was adequately dealing with public education funding. The second was a method to preserve LEED for the environment of our State. The third was a reasonable opportunity for us to participate in the LEED program. We believe this bill does that. We are fine with Section 15.5 on page 16, and that the property tax abatement will be based on the property tax bill as a whole. The last issue is to be consistent with the change that was made to the start date of the sales tax exemption on line 27, which was changed from January 1, 2006, to December 31, 2005. We would ask that the extension date of January 1, 2010, be changed commensurately to December 31, 2010.

Assemblywoman Smith:

Changing that date is fine. We thought we had captured the appropriate dates, but we do not have an issue with that because the intention is for those retrospective projects that need this criterion to try to have the appropriate sunset period.

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

Our announced project will be completed in the fourth quarter of 2010 and we want to make sure it is covered because so much construction material is used that last year. We would like to thank everyone who worked so hard on this bill. We like this bill.

Jeff Fontaine, Executive Director, Nevada Association of Counties:

We would like to express our appreciation to this Committee, as well as the subcommittee, for working on this difficult task. We are concerned about the fiscal impact of this policy on our counties. It affects every county in the State. We are concerned the counties do not have a say in whether or not these abatements are granted or if there is a benefit to the counties in granting

abatements. We are concerned about the overall cost and the disproportionate cost to counties for carrying out a state policy.

Kyle Davis, Policy Director, Nevada Conservation League:

We support the new mock-up of this bill. We were pleased to see that a lot of our recommendations on the language were included. We wanted to make sure that Nevada still has a proper incentive for constructing green buildings so we can continue to be a leader in the country. I want to thank the Committee and Assemblywomen Kirkpatrick and Smith for their hard work. We appreciate being part of the process.

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

We support this bill and acknowledge the hard work and diligent effort of all involved in this process.

Robert Tretiak, representing International Energy Conservation:

I wanted a clarification on Section 15.5(a) on page 16. Does that mean if a building is constructed pursuant to a preconstruction contract executed on or before December 31, 2005, it would by definition incorporate any buildings which are already constructed?

Brenda Erdoes:

I believe the answer to your question is that they would have to meet the other criteria, which include applying during the period specified under this program which was the A.B. No. 3 of the 22nd Special Session program; but with that qualification, yes.

Robert Tretiak:

Is there still abatement on the entire property, including buildings and other structures, with the exclusion for the school districts?

Brenda Erdoes:

Yes, it is the tax bill for the buildings and structures except for the tax rate for the schools, which is defined in this bill.

Robert Tretiak:

We support this bill and thank Assemblywomen Kirkpatrick and Smith for their efforts.

Chair Ocegura:

Are there any questions for Mr. Tretiak?

Terry Graves, representing World Jewelry Center:

I would like to introduce Dan Parks of the World Jewelry Center project who has a brief comment.

Dan Parks, representing World Jewelry Center:

At the beginning of the week, the Committee announced their task as trying to find a delicate balance between the fiscal needs of the State and preserving some meaningful incentives to develop LEED buildings. I would like to congratulate the Committee on having accomplished that task. This is a fair bill and does exactly that. Those of us in the pipeline get pinched a little bit, but we can live with that. I think the incentives for the future are still sufficient to induce people to build green buildings, which is the underlying intent of this legislation in the first place. Considering Section 15 on page 16, line 28, I would like to ask for two more years for the sales tax benefit. In our projects, the current end date would cut us off at a time when we will be about 60 percent complete with none of the tenant improvement work finished. Bringing the tenant improvement work on line in a manner that is compatible with the LEED silver objectives that we are trying to achieve is an important component of getting the entire building certified. We are happy with this bill as a good solution.

Chair Ocegueda:

Are there any questions?

Kevin Sullivan:

I wanted to clarify for Assemblyman Anderson that I was trying to ask for a year's extension of the sales tax exemption to December 31, 2010.

Assemblyman Anderson:

It was my mistake about what you were asking. I apologize.

Robert Elliott, Vice President, Government Affairs, MGM Mirage:

I am here with Cindy Ortega, our Senior Vice President for Energy and Environmental Services. We are here to support the work that has been put into A.B. 621. We know how difficult and complex this issue was for everybody involved. This is truly a fair and balanced approach to solving this very complex problem. In this bill we see that we are preserving education, promoting energy conservation, and sustaining the environment for the future of our State. Those are all lofty and laudable goals for Nevada, and we are proud to help with this bill. We believe Nevada will maintain its leadership position as a positive environmental policy leader. We support the work that has been done on this bill.

Chair Ocegüera:

Are there any questions?

Terry Hickman, Executive Director, Nevada State Education Association:

We appreciate the hard work of this Committee, the subcommittee, and especially Assemblywomen Kirkpatrick and Smith. Thank you for keeping public education funding where it needs to be.

Chair Ocegüera:

Are there others who wish to testify? I will close the hearing on A.B. 621 and would entertain a motion which would include the changes noted in Sections 13 and 15 and allowing legal counsel to be sure the dates are correct.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS AS
AMENDED ASSEMBLY BILL 621.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ARBERRY, BUCKLEY,
CHRISTENSEN AND GANSERT WERE ABSENT FOR THE VOTE.)

The meeting is adjourned [at 10:35 a.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman John Ocegüera, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 26, 2007

Time of Meeting: 9:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 621	C	Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1 and Assemblywoman Debbie Smith, Washoe County Assembly District No. 30	Mock-up of the bill