

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

**Seventy-Fourth Session
April 5, 2007**

The Subcommittee on Commerce and Labor was called to order by Chair Marilyn Kirkpatrick at 7:08 p.m., on Thursday, April 5, 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/. 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:

Assemblywoman Marilyn Kirkpatrick, Chair
Assemblywoman Francis Allen
Assemblyman Marcus Conklin

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Patricia Blackburn, Committee Secretary
Earlene Miller, Committee Secretary

OTHERS PRESENT:

Tony Sanchez III, representing Acciona Solar Power
Tim Rubald, Interim Secretary, Commission on Economic Development
Dino DiCianno, Executive Director, Department of Taxation
George Sterzinger, Executive Director, Renewable Energy Policy Project,
Washington, D.C.
Rebecca Wagner, Commissioner, Public Utilities Commission of Nevada
Judy Stokey, Director, Government Affairs, Nevada Power/Sierra Pacific
Fred Schmidt, representing PowerLight Corporation

Minutes ID: 910



Chair Kirkpatrick:

We will open the Subcommittee hearing on Assembly Bill 186. Will all the parties that have been instructed to work together come forward? Please update us on your progress.

Assembly Bill 186: Revises various provisions relating to energy. (BDR 58-784)

Tony Sanchez III, representing Acciona Solar Power:

I am here to discuss revisions with respect to A.B. 186. You have before you two pieces of paper. One is revisions to *Nevada Revised Statutes* (NRS) 360.750 (Exhibit C). That provision has been worked on with the assistance of Tim Rubald, who is with us this evening. This document has been reviewed and vetted by Mr. Thompson, the Executive Secretary-Treasurer of the AFL-CIO.

During discussions, it was requested by Mr. Thompson that there be some mechanism by which, once an entity receives an abatement from the Commission on Economic Development, normally at the two-year period after the sales tax has been abated, the Department of Taxation will get involved to do an initial audit to determine whether or not the requirements of receiving the abatement were met. Namely, was there a sufficient number of employees on the job, is the entity paying a sufficient hourly wage, and was the minimum investment done. This amendment says that a member of the public can request, through the Economic Development Commission, to have an audit performed and have it brought back to the Commission with a public pronouncement as to whether or not that company met the terms of the original agreement signed two years earlier. The public forum would only be upon request. It is our understanding that this would not be done in every instance. It would allow a member of the public to request an audit to verify that the "promises were kept."

We appreciated the assistance Mr. Rubald provided in helping us put this together. We hope it will meet with everyone's approval.

Assemblyman Conklin:

Mr. Sanchez, I am assuming you worked with Mr. Rubald on this, but also with Mr. Sterzinger and Mr. Thompson, the original sponsors of the bill.

Tony Sanchez:

Yes. Mr. Sterzinger will be here to discuss the provisions of the second amendment that you will see. With respect to the first one, it was with Mr. Thompson.

Assemblyman Conklin:

It is my understanding that it is acceptable language. Is that correct?

Tony Sanchez:

Correct.

Assemblyman Conklin:

Mr. Rubald, I am assuming you have had a chance to read this amendment. Does this get at the issue that we were concerned with in the original hearing?

Tim Rubald, Interim Secretary, Commission on Economic Development:

Yes. I believe it makes an audit available to the public, which was one of Mr. Thompson's concerns.

Tony Sanchez:

I might provide one clarification on the amendment and it is something that Mr. Rubald and I discussed. The last sentence indicates "at the Executive Director's discretion may redact those portions of the audit report considered as a trade secret or similar confidential item." We meant for that to indicate that the Executive Director, working in conjunction with the applicant, may redact; so they would be working together to determine what portions would be appropriately redacted.

Assemblyman Conklin:

I do not see any reason why that would not be acceptable. I am curious, Mr. Sanchez, why in conjunction with the business? I would think the business would bring forth the concept that something is a trade secret and the Executive Director, who is impartial, would decide if, in fact, it is a trade secret or not.

Tony Sanchez:

That is right. We just wanted to clarify that the applicant had an opportunity to indicate which portions it thought were confidential or trade secrets.

Assemblyman Conklin:

But the applicant would not be involved in the decision-making portion.

Tony Sanchez:

The applicant would not have the final decision. That decision would be the Executive Director's.

Assemblyman Conklin:

So, we could say the Executive Director in conjunction with the applicant. That would be acceptable as long as the decision is in the hands of the Executive Director.

Chair Kirkpatrick:

Does anyone else have anything to offer?

Dino DiCianno, Executive Director, Department of Taxation:

I would like to take just a moment to try to relay to you what the involvement is with respect to the Department of Taxation, when it conducts audits on these types of companies that have been approved an abatement through the Commission on Economic Development. I need to make it very clear for the record that when we conduct an audit, all we are doing is substantiating that company has met the substantial requirements of the agreement that the Commission on Economic Development has granted. As Mr. Rubald has indicated, it is a matter of meeting the wage threshold, the number of purchases, and that they have hired certain employees. Any audit that we conduct is confidential. What I would suggest here, and if the maker of the amendment would be willing to go there, normally we would not release an audit other than to the party that we audited. I would suggest that we would be more than willing, upon request, to do an abstract. The name of the company would be redacted and only the findings of that audit would be published.

Assemblyman Conklin:

Mr. Sanchez, does that strike at the intent of the agreement that you have?

Tony Sanchez:

The problem that I would envision would be a member of the public would not know which company's information that was if they had a concern about a particular company. We do agree with the abstract concept, but in drafting this amendment, it was our understanding that this would be part of the contract that the applicant would sign at the time of receiving the abatement. They are agreeing that there is this abstract process that they have to come back after the initial audit with the Department of Taxation, and report back to the Commission as to whether they met the conditions.

Dino DiCianno:

Mr. Conklin, if it would make it easier, the agreement that the company has with the Commission on Economic Development could include the company's allowing the Department to release that information; then I would not have a problem.

Assemblyman Conklin:

I think that is probably the best way to deal with this. Just make this part of the Commission's contract. If you sign the contract you are agreeing to the terms in there, and the terms say that you will be audited and that is public and you would accept those terms. Is that a fair statement?

Tony Sanchez:

Yes, that would be our understanding.

Assemblyman Conklin:

Can we make sure that is clear in the amendment?

Chair Kirkpatrick:

Yes. I do have a question. What are the checks and balances? Will that be part of the form? Is that a waiver they sign?

Dino DiCianno:

It is my understanding, based upon the discussions here, that any company that would be afforded this abatement within the agreement that they sign and the Commission on Economic Development approves, would have a statement in that contract to the effect that there is an audit and that once the Department of Taxation completes that audit, it becomes public information. I am not trying to muddy the water; I am trying to be very careful about avoiding liability with respect to the Department of Taxation. Once we do an audit on a particular company, there is the possibility that they do owe tax, that they may not meet those thresholds that have been agreed to by the Commission on Economic Development. That is an appealable situation to the Nevada Tax Commission. This process should be at the finale. Once that appeal is final, then it is done. It would be premature to release audit findings that are under appeal.

Chair Kirkpatrick:

It has been four weeks since we started working on this. Was that part of the discussion all along? I feel as though this is a 12th-hour discussion.

Dino DiCianno:

I was just given this amendment this afternoon.

Assemblyman Conklin:

I think the Director is just trying to look out for the State's best interest and the interests of his Division. Does this appeals process have a time limit?

Dino DiCianno:

That is correct. The time frame is 45 days.

Assemblyman Conklin:

If we could clear up that issue and the other two items in conjunction with the applicant and also the public record piece that goes onto the application, this would be okay. We will have it mocked up and if there is still an issue, we can address it in the full Committee.

Chair Kirkpatrick:

Does anyone else have anything to offer?

Tony Sanchez:

That concludes our testimony on amendment one. During the discussions with Mr. Thompson, the second proposal you have before you was brought forth and Mr. Sterzinger will be speaking on that on behalf of himself and Mr. Thompson.

George Sterzinger, Executive Director, Renewable Energy Policy Project, Washington, D.C.:

[Distributed a proposed amendment ([Exhibit D](#)).] The easiest way to go through this is to first explain the spirit of this amendment and what it is intended to replace in the initial bill. In the original bill, there were two parts. One had to do with "after-the-fact monitoring" of the economic development benefits of contracts that were approved by the Public Utilities Commission. The other had to do with the tax abatements offered by the Nevada Economic Development Commission. We are offering a replacement for the section that was the "after-the-fact monitoring," and instead trying to offer in its place something that is "before-the-fact" inducement that we hope will create a situation where substantial solar development, in particular, will come into the State.

This amendment would establish an advisory board mainly focusing on the economic development aspects of solar energy. It also characterizes it as a solar challenge. The solar challenge in the amendment is defined as the State identifying specific areas that provide the opportunity for Nevada to bring to life projects that will make a huge impact on the solar world.

I did not realize until a little while ago just how much this took me back into an earlier time of my work here in the State. In the mid-1990s, Senators Reid and Bryan put into the Defense Reauthorization Act an instruction to the Department of Energy to investigate how the nuclear test site facility could be used for the development of solar energy. The Department of Energy hired me to do that feasibility study. When that was done, Senator Bryan and others in the federal government put together an implementation group, consisting of the

Department of Energy, people from the test site, and Senator Bryan, himself. That led to the Corporation for Solar Technology and Renewable Resources. That was funded by the Department of Energy. I wrote the initial request for proposals. Unfortunately, that did not lead to any major breakthroughs. It did come close. The ideas are very similar to what is in this amendment. The basic charge was to take the attributes that the State offers—land, solar installation, and any other unique attributes—and combine that with support and try to put those together in a way that would produce breakthroughs in the world of solar energy. It is in that spirit that this amendment is offered.

This amendment would allow the State to set up a solar advisory board. It is not a requirement, it just says the State may do that. It would be headed by the Lieutenant Governor and be composed of seven people, but obviously, those are merely suggestions. The board could be made up of any composition. The work of the board would be to work with the development agencies to put together a package for a solar company coming into the State. It would show all the special incentives the State is offering and it would be compiled in one place. The other part of the work of the board would be to identify these solar challenges. What are Nevada's unique attributes? What can we find, put together, and offer to people that would draw them into Nevada and raise the visibility of the State, as well as the companies that participate here?

The final thing the bill does is set in place a suggested initial solar challenge that is not meant to preclude any others, but sets forth a blueprint for solar development. If any solar developer wanted to come in and could meet a certain threshold standard, they would be given a very open contract where they could install solar and receive a special rate for that project.

Chair Kirkpatrick:

Not to cut you off, but we have two more bills in Subcommittee to hear tonight. I would like the short answers at this time.

George Sterzinger:

There is nothing in this amendment that is instructive and there have been a number of concerns. This advisory board would be established and they would look at this particular issue.

Chair Kirkpatrick:

I have a question. In Nevada, the Lieutenant Governor and the President of the Senate are the same person. That would have to be changed. Are there any specific qualifications that you are looking for on the board?

George Sterzinger:

No.

Assemblyman Conklin:

I wanted to be sure my colleague understands that the Lieutenant Governor would appoint two board members, the Majority Leader of the Senate would appoint two, the Speaker of the Assembly would appoint two, and the Lieutenant Governor would be a member, since the Lieutenant Governor is the driving force behind all economic development in the State.

Chair Kirkpatrick:

Is there anyone else wishing to speak on this amendment?

Rebecca Wagner, Commissioner, Public Utilities Commission of Nevada:

I have just been able to read this and I had someone else sit in my place to hear the presentation on this. My initial reaction and comments are, do we really need this? With the soon-to-be-installed solar projects in Nevada we will be leading the nation in installed solar per capita. I question the need to create a new advisory board although I like the focus on economic development. This is something that could easily have been vetted through the Energy Task Force. I have concerns about the standard offer contract which I will not bore you with at this point. In general, I do not see how the Commission can support this.

Judy Stokey, Director, Government Affairs, Nevada Power/Sierra Pacific:

I oppose this amendment, echoing everything that the Commissioner has said. We currently have a request for proposal (RFP) process in place and all of these can be vetted through there. It then goes to the Commission to be sure that everything has been handled correctly. We had a presentation in another committee recently that stated that the cost of solar was actually coming down, decreasing in price, so that they will be competing with other renewables fairly soon. We have a very aggressive demonstration program that this Body approved and it has been very successful, and we do not see the need for this. The Energy Task Force already does a lot of what is in this bill.

Assemblyman Conklin:

Ms. Stokey, it is my understanding that the Task Force does not deal with any of this. In what specific way would the Task Force deal with this issue?

Judy Stokey:

The Task Force has a representative for solar energy, a person from the industry. All the renewable people have a position. They would have a voice in the Task Force to discuss some of these processes.

Assemblyman Conklin:

Just so I understand, are you suggesting that it is taken care of in the Task Force; that the solar expert is a person who can help foster the growth of that industry in this community? You said this circumvents the process. I do not think it does. On the last line it simply says if the board finds that there are opportunities to grow the solar industry, they can come before the Legislature and/or go before the Public Utilities Commission for a formal contract. That does not circumvent the process. They could go to Nevada Power or anywhere else just like anyone else can. It does not obligate either of you to do anything. It does not raise the portfolio standard. It does nothing but permit government officials to participate in the solar process and learn what things are needed, both from a government perspective and from a private industry perspective, to foster a substantial renewable resource that this State has.

Judy Stokey:

Yes. What I meant was that the solar industries are doing a lot better now than they were. This developer can participate just like all the other solar developers in our RFP process.

Assemblyman Conklin:

What in here says that they no longer can compete in that process?

Judy Stokey:

It does not say they can no longer compete. We think that is the process they should compete in.

Assemblyman Conklin:

So, you do not think they should try to lay groundwork and do homework before they ever come before you for a contract?

Judy Stokey:

No. I think they need to participate just like all the other developers.

Fred Schmidt, representing PowerLight Corporation:

PowerLight Corporation is the most successful and aggressive developer of solar in the State of Nevada. We have built projects with the Las Vegas Valley Water District; several of those are online. We have just announced the largest North American solar photovoltaic project which will break ground at Nellis Air Force Base on April 23, 2007. I just saw this amendment tonight for the first time. I have not had time to talk to my client about it. The first parts of the amendment, that talk about the creation of the board and so forth, are general and I guess we do not have a problem with them. The problem we have had in getting solar off the ground in Nevada is with studying things, developing

regulations, and with procrastination at various points and times where we did not get any contracts. We have now entered into contracts and we are developing sites and it is through a process that involves competitive bidding. My clients have been very successful in that and are now investing large amounts of money in Nevada. I think we will be concerned about the standardization of a process for pricing for that contract, which also will lead to a standardized contract having to be developed, and then lead to a new process that will delay the company from signing additional contracts for a period of time.

We have several projects on the horizon in Nevada and we are very familiar with the current contract process and it has worked very well, we think. That is why Nevada is leading the nation right now in solar development, unlike where Nevada was back in the 1990s when we were first trying to get solar off the ground. We would be hesitant to support anything that slows that process down.

My initial reaction is that this amendment assumes that we need help and we are not doing the things that we need to do in order to be successful in solar, and I think that is contrary to what the actual experience is.

If you would like a presentation, or more information, I would be happy to bring my client to the Committee to explain in more detail what is happening, what is working, and why it is working. Then we would have some time to study this as to whether this would actually help or hurt that process. Frankly, I do not know, but I am concerned about it because it is a total redirection of where we have been going in terms of developing solar power through a competitive bid RFP process.

Chair Kirkpatrick:

Does anyone else wish to speak?

Assemblywoman Allen:

Is your objection specifically to the amendments, the first and the second, as well as the original bill?

Fred Schmidt:

We have been monitoring the original bill. The original bill was directed toward the other significant solar developer who is building in Nevada right now and the labor problems they have had. We have not had those problems with our projects, but we have been monitoring it because we do not want some sort of overkill in terms of attention to it. We have talked with Mr. Thompson. We have a very good relationship with the union. Our Nellis project will be built

based on prevailing wage and we will go through the Nevada unions for all the labor we can get. If it is not available to us, we will then step outside as we did on our earlier projects, probably to California, for that labor. We do not expect problems with the union.

This amendment is not related to the original subject of the bill. I do not have time to give you a specific position, but it is this type of amendment that is well-intentioned in terms of its scope or direction, but may have unintended consequences that really do not help the solar industry. I would ask that you take that into consideration before you decide to move forward. In particular, section 3a, which is problematic in a number of ways.

Chair Kirkpatrick:

I do not know who wants to answer this question, but I believe that the Senate Minority Leader already appoints a person who works with solar to serve on the Task Force that we currently have in place. Is that not correct?

Judy Stokey:

Yes, that is correct.

Chair Kirkpatrick:

I think sometimes if there are too many boards there is no communication.

George Sterzinger:

I appreciate your concerns. The intent of this was not to subvert the portfolio standard and the competitive bidding process for that standard. The intent of this is to open another channel for the development of solar energy. The intent is to set a marker out there that would be sufficiently challenging so that any company that could come forward to meet it would be setting a pathbreaking standard for the industry as a whole. It is not to select just the best of the competitive bids that come forward at a particular time. It is to move ahead and get Nevada into a position where it could offer a contract to some company that could do something totally different that would set a new standard.

I do not see it as getting in the way of the portfolio standard. I do not see it as going around the Public Utilities Commission. It is meant to work with all those, but also to add another avenue for the development of the industry at this time.

Chair Kirkpatrick:

Thank you and I do appreciate your input and your amendment. Is there any further testimony either in favor or opposed?

Assemblyman Conklin:

I am getting the sense that not all of this is going to move. I want to make certain that we get some things and give others the opportunity to take a look and consider. There are three issues in this bill; there is amendment number one, which has additions to clarify the "in conjunction with the applicant" phrase; clearing up the public record issue, that when you sign up for this there will be a statement that the Economic Development Commission puts into the application that the audit will be public record; and then also making certain that the trade secret item is covered.

If we address those in the first amendment, that would be acceptable. I get the sense from my colleagues on this Subcommittee that the second amendment needs some work. Not to hold up the bill, I would be willing to accept the first amendments with the additions already stated, plus adjusting Section 10 in the bill. This was the discussion from the previous Committee hearing where we had agreed to make this 2 megawatts in D#1 on page 10, line 1 and line 8. So we are not expanding the solar capacity for schools to 20 megawatts from 750 kilowatts. I believe that was the acceptable agreement; and then we also ask the parties on item 2 to get together before this goes to work session in full Committee and come back with their amendment at that time.

[The Subcommittee decided to return the bill to the full Committee with the recommendation to amend.]

[There being no further business to come before this Subcommittee, the meeting was adjourned at 7:44 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 5, 2007

Time of Meeting: 7:08 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
AB 186	C	Tony Sanchez	Proposed amendment
AB 186	D	George Sterzinger	Proposed amendment