

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

**Seventy-Fifth Session  
April 1, 2009**

The Committee on Commerce and Labor, Subcommittee on Energy was called to order by Chair Marilyn Kirkpatrick at 5:57 p.m. on Wednesday, April 1, 2009, 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/75th2009/committees/](http://www.leg.state.nv.us/75th2009/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:**

Assemblywoman Marilyn K. Kirkpatrick, Chair  
Assemblyman Chad Christensen  
Assemblyman Marcus Conklin

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblyman David Bobzien, Washoe County Assembly District No. 24  
Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27

**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Dan Yu, Committee Counsel  
Andrew Diss, Committee Manager  
Patricia Blackburn, Committee Secretary

Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Kyle Davis, Policy Director, Nevada Conservation League, Las Vegas, Nevada  
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada  
Gregory A. Kern, Director, Customer Renewable Energy & Energy Efficiency, NV Energy, Las Vegas, Nevada  
Charles L. Horsey III, Administrator, Housing Division, Department of Business and Industry  
Hilary Lopez, Ph.D., Chief of Federal Programs, Housing Division, Department of Business and Industry  
Joseph Johnson, representing Toiyabe Chapter of the Sierra Club, Reno, Nevada  
Judy Stokey, Director, Government Affairs, NV Energy, Las Vegas, Nevada  
Rose McKinney-James, representing The Solar Alliance, Las Vegas, Nevada  
Gail Tuzzolo, representing Nevada AFL-CIO, Las Vegas, Nevada  
Dylan T. Shaver, representing the City of Henderson, Nevada; and representing the Nevada Conservation League, Las Vegas, Nevada  
Lisa Corrado, Redevelopment Project Manager, City of Henderson, Nevada  
Tom Clark, representing Cogentrix Solar Thermal; and representing Semptra Energy, Carson City, Nevada  
Alfredo Alonso, representing Ausra Solar, Reno, Nevada  
John W. Griffin, representing Solar Millennium, Reno, Nevada  
Charles Benjamin, representing Western Resource Advocates, Carson City, Nevada  
Rebecca Wagner, Commissioner, Public Utilities Commission of Nevada  
Eric Witkoski, Consumer Advocate, Office of the Attorney General  
Dino DiCianno, Executive Director, Department of Taxation  
Patrick T. Sanderson, representing Laborers International Union Local 872, AFL-CIO, Carson City, Nevada

**Chair Kirkpatrick:**

We will be discussing Assembly Bill 522. I would like to go through the bill section by section and have anyone give us their concerns about those sections. If you have a problem with any section, please come up to the witness table.

Does anyone have any concerns about sections 2 through 4 on definitions?

**Assembly Bill 522:** Makes various changes relating to energy. (BDR 58-1139)

**Kyle Davis, Policy Director, Nevada Conservation League, Las Vegas, Nevada:**

When it says that no more than two Commissioners may be members of the same political party or have expertise in the same field, we thought that should be clarified to state whether they have only one field of expertise. It is possible to have people with multiple areas of expertise, but we would still want them to be able to serve. [Submitted proposed amendments on several sections of the bill ([Exhibit C](#)).]

**Chair Kirkpatrick:**

Is that section 3?

**Kyle Davis:**

That is section 4, subsection 4, paragraph (b).

**Chair Kirkpatrick:**

Are there any more concerns about section 4? Does anyone have questions or concerns about section 5? Are there concerns with section 6? Are there concerns with section 7? Are there concerns with sections 8 through 12? Are there concerns with sections 13 through 16?

**Kyle Davis:**

We have a recommendation for a change under section 16. Our proposal is to add a new subsection 10 which would say, "consult with appropriate state and federal agencies early in the process to ensure that the identification of the renewable energy zones and subsequent transmission planning are consistent with the *Nevada Wildlife Action Plan*." This Plan, to some degree, is federally mandated. Federal funding for wildlife is dependent on preparing this plan, and it is a plan to prevent species from becoming listed as either threatened or endangered. When we talk about development of renewable energy in some of these habitat areas, we should be consistent with the *Nevada Wildlife Action Plan* to reduce the possibility that we end up with endangered species which would bring renewable energy development to a halt. At the end of subsection 10 of the bill, we would add "including without limitation, the Western Governors' Association and the Renewable Energy Transmission Initiative." Those are the groups that came to mind that have already done some of this work, and we would like the Commission to be able to draw upon that expertise when putting together these types of plans.

**Chair Kirkpatrick:**

Do you think that we need to specify who those groups are? I thought this wording was broad so that we could pull them all in.

**Kyle Davis:**

It was a suggestion from one of my environmental groups as something that might be helpful. If the Committee feels the wording in the bill is broad enough, I think we are comfortable with that. It was just a suggestion.

**Chair Kirkpatrick:**

What I do not want to do is have specific names in the bill, and we would not look for other groups outside of that.

**Assemblyman Christensen:**

You were talking about the protection of animals. I was trying to find that topic in the bill, and I do not see it.

**Kyle Davis:**

That was our new subsection 10, in section 16.

**Assemblyman Christensen:**

So it is not in the bill currently?

**Kyle Davis:**

That is correct.

**Chair Kirkpatrick:**

Does anyone have any questions or concerns about this section?

**Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada:**

I need clarification on page 5, subsection 5, which talks about requests to obtain money for development through the issuance of industrial development revenue bonds. I want to clarify that a Supreme Court ruling in 1991 voided the section of *Nevada Revised Statutes* (NRS) 349.670 that applies to paying the prevailing wage on these projects. The Attorney General's staff has issued an opinion on NRS 349.670 for one of the projects. So, to capture the original legislative intent there needs to be a change in NRS 349.670.

**Chair Kirkpatrick:**

Let me clarify, was that section 16, subsection 5, that you were referring to?

**Paul McKenzie:**

It is section 15, subsection 5. There are several sections referring to bonds in the bill, but this is the first one. *Nevada Revised Statutes* 349.670, subsection 4, addresses the payment of prevailing wage on projects like that. A change was made in 1991 that became effective in 1992. The Supreme Court

made a ruling, and since then the language does not apply, and you do not have to pay prevailing wage on those projects.

**Daniel Yu, Committee Counsel:**

I will look into that and get back to you.

**Gregory A. Kern, Director, Customer Renewable Energy & Energy Efficiency, NV Energy, Las Vegas, Nevada:**

I have concerns with section 16, at subsections 11, 12 and 13. You are talking about (1) developing a program to provide for energy conservation in the state that provides rebates or incentives for such conservation, (2) developing a program to provide for energy efficiency in the state for residential buildings, and (3) carrying out programs of energy conservation, weatherization, and energy efficiency for eligible households pursuant to NRS 702.270. The suggestion is we would not want to compete against each other. We have a lot of programs for different people. There are light bulb programs, refrigerator programs, et cetera. What I think we would want to do is structure this so we are not entering the same market. We could complement each other by saying our company would pay \$30 for recycling on an old refrigerator, and then using this fund you could add another \$10 for a total of \$40. We spent a lot of money designing and creating these programs.

The other choice would be to enter markets where NV Energy is not allowed. The Commission requires we work only in areas where the total resource cost shows the benefits, over the life of the measure, are more than all the costs that either NV Energy or the ratepayer paid. There are many areas, like Energy Star refrigerators, in which we cannot do any more because it is not cost effective. There are also people with incomes lower than 150 percent of the federal poverty level. We cannot enter that market. We do not want to fight over a particular area; we either complement a program or decide on another area to pursue. That is my only suggestion for section 16.

**Chair Kirkpatrick:**

I think that Southwest Gas has a hot-water heater rebate program. NV Energy has an air conditioning unit rebate program.

**Gregory A. Kern:**

We have about 30 different programs in the State of Nevada. Under our refrigerator program, we will come to your house if you have a second refrigerator in the garage and pay \$20 for it. We will take that refrigerator and recycle it. We get to claim all the portfolio energy credits for the energy that refrigerator would have used if it lived another ten years in the garage. Imagine operating that program with these funds and saying, "I will run the same

program. I will offer \$35." We would be competing in the same market, and I do not think that would be a great use of the funds.

**Assemblyman Conklin:**

You are saying, it is public money and it is competing with other public money; is that right?

**Gregory A. Kern:**

The money that pays for our program is ratepayer money.

**Assemblyman Conklin:**

The money involved would be ratepayer money as well.

**Chair Kirkpatrick:**

The point would be for the customer to get the most value. We do not want them to go to you for \$30 and then to the state for additional money. One of the ideas behind this rebate program is that we can give only as much money as we have in the fund. I believe there are many energy and conservation programs for which we would not compete. I believe that through the regulation process—you are right and we do not want to compete—we do, however, want to expand the mindset of what consumers can actually get.

**Gregory A. Kern:**

If you wanted to enter into the refrigerator program and add an additional \$10 which would come from the state, people might be more willing to recycle their refrigerator.

**Chair Kirkpatrick:**

I agree.

**Assemblyman Conklin:**

If you could give us suggested language, it would be helpful.

**Chair Kirkpatrick:**

I think the intent was to let the Commission set that regulation process. Although we could put it in statute today, fifteen new programs might develop. We could spell it out, but I think the Commission should do that.

**Charles L. Horsey III, Administrator, Housing Division, Department of Business and Industry:**

In building upon what Mr. Kern just said, approximately 11 years ago the private sector approached the administration and the Housing Division, to see if we would have an interest in taking over the state's weatherization program. We

did that. The primary motivation was to leverage funds in other programs like the Low-Income Housing Trust Fund, to add to the weatherization program and give it more financial viability. We contribute about \$400,000 to \$500,000 per year from the Trust Fund to the weatherization program.

The current bill would divide the weatherization programs into two different parts. The Commission would be in charge of the weatherization program utilizing Universal Energy Charge (UEC) funds, which are the funds that come from the small charge on each of our power bills. And we would have responsibility for weatherizing using the Nevada's Low Income Weatherization Assistance Program, Department of Energy.

Our people are meeting with Senator Horsford's staff and the Department of Employment, Training and Rehabilitation (DETR) and developing the implementation requirements behind Senate Bill 152. In the ten years that we have administered the weatherization program, we have developed a number of sub-grantees that undertake marketing efforts. They utilize construction firms. The purpose of S.B. 152 is to broaden the number of trained employees in the weatherization program.

We certainly understand the desire to improve the efficiency of all of our residents' homes and welcome whatever help can be given. One concern is that our program will be the one with all the expertise. Dr. Lopez supervises our weatherization program, and she might be able to give you some more information.

**Hilary Lopez, Ph.D., Chief of Federal Programs, Housing Division, Department of Business and Industry:**

I would just echo what Mr. Horsey was saying. We are concerned that the system may create two separate programs since the bill addresses the transfer of funds from the UEC account which would, under the bill, be transferred to the Energy Commission. The bill also seems to infer that we would maintain the Department of Energy's and other funds that we receive, which are approximately \$1.2 million to \$1.5 million a year. This could present issues in terms of the operation of our program, because of the scale, and it also creates a bifurcated system.

**Chair Kirkpatrick:**

The thought was to take the 25 percent of the current charge currently received and the 75 percent from the charge which goes to low-income customers to help pay their power bills, and apply it to a full-time Commission. There are other funds available that we could use, as well as allowing the Nevada State Office of Energy to apply for additional grants so the scope would broaden.

Just because you do not fall within a certain income does not mean that you should not have the opportunity to weatherize.

**Charles L. Horsey:**

One of the provisions of Senator Horsford's bill is that we are also going to work with DETR to obtain grants for the same purpose. It is a policy decision to have two or three different programs working simultaneously.

**Chair Kirkpatrick:**

I can get with Senator Horsford to see what his thoughts are as well, but what we wanted to do is expand it to all Nevadans. I know there is approximately \$37 million in stimulus money coming to the state. If everybody received \$5,000 to weatherize their homes, that would be 6,400 people we could help. It seems interesting to me that the energy programs we have are not within the Energy Office.

**Charles L. Horsey:**

The weatherization program has been extremely successful utilizing the economic stabilization monies. They are enabling us to use more flexible income limits to include more homes.

**Paul McKenzie:**

In section 16, subsections 9, 10, and 11 talk about transmission. I think the idea is to have the Energy Commission administer this instead of the Public Utilities Commission of Nevada (PUCN).

**Joseph Johnson, representing Toiyabe Chapter of the Sierra Club, Reno, Nevada:**

I would like to go back to section 16 and the issue of the Commission doing efficiency programs. I would like to bring to your attention, concerning the efficiency portion of the portfolio that utility programs are the only ones recognized that can earn efficiency credits. Competitive programs should be considered, but there should be provision for some type of additional programs for efficiency. There are programs that do not fall under the PUCN total resource cost, and perhaps there are ways to simulate those programs. I am not proposing language, but I think there has been a recognized inadequacy in the overall program. Other individuals and corporations should have the ability to participate in the process.

**Chair Kirkpatrick:**

I think that is the goal. The thought behind the whole rebate program was to base it on the Southern Nevada Water Authority, under which many people converted their grass.



**Judy Stokey, Director, Government Affairs, NV Energy, Las Vegas, Nevada:**

On section 16, I would like to discuss transmission, over which the Federal Energy Regulatory Commission (FERC) has jurisdiction. How would the Energy Commission coordinate that? In addition, how would the Energy Commission work with the PUCN, and who are they going to have jurisdiction over? My understanding is that the regulated entity, which is NV Energy, would be under PUCN jurisdiction, but everybody else who is not regulated would be under the Energy Commission. Throughout the whole document, "Task Force" has been removed and replaced with "Commission." We deal with the Task Force very closely on many of our programs. Does that mean those programs will go to the Energy Commission, but the PUCN will handle the other programs? We are unsure where we would go.

**Assemblyman Conklin:**

You have two markets. This is not uncommon since many of our states have regulated monopolies for utilities. You have a monopolistic market, which is the one you operate in. We have chosen to provide reliable energy for our consumers. Everything you do relating to delivery to our consumers is governed by the PUCN. If energy is going to be delivered to a Nevada consumer, it is going to be delivered by you. It may not be developed by you, it may not be transmitted by you, but it is delivered to the customer by you. Anything that is on that stream is governed by the PUCN.

For everything else there will be the Energy Commission. I think the standard is very clear. It is hard to say what will come up in the Energy Commission because it is a growing, dynamic area. It is almost impossible for us to list, because we would be limiting what potentially could develop. It is also difficult to say what the interplay would be between the Commission and Federal Energy Regulatory Commission (FERC), because I am not sure if FERC knows how they will manage what will come from the federal government in terms of carbon taxes and other things.

Perhaps this needs to be drafted more carefully. If someone wants to develop energy for the purpose of delivering to our customer, they fall under one jurisdiction. The Energy Commission is for everything not dealing with delivery, and for fostering the growth of competitive renewable energy markets that will not be sold here. It may be possible that you participate in that market as well. You might become a "merchant" because it would benefit our ratepayers to sell energy at a higher price and then return reduced-priced energy to the ratepayers. If that is the case, when you are doing your merchant power producing, you would not be obligated under the PUCN. Does that explain it?

**Judy Stokey:**

Yes. I would like to caution that we deal with the Energy Commission and the California Public Utilities Commission (CPUC). They do conflict at times, and it adds bureaucracy and time in getting things done. They also do not have the time limits that you have set. We want to make sure we define who will cover what.

**Assemblyman Conklin:**

Can you share with us now, or in writing, what those mix-ups are so we can avoid them? I think we would be happy to address them, but we need some specifics.

**Judy Stokey:**

We will make sure you get them in writing.

**Chair Kirkpatrick:**

We need to know what things were worked on with the Task Force. The thought behind the Energy Commission is to make sure we are not like California. We tried to model it after the State of Washington. They are very effective and their agencies work well together. We do not want someone going from one regulator to another trying to get the best answer. We do want set duties. If we are going to fund the Commission, we need to have full-time jobs, so employees are not conflicted or more involved than they should be. We need full-time employees to get the renewable program off the ground and running quickly. If there are things in the Task Force that need to be spelled out for the PUCN that would be okay. We are open to suggestions. One of the problems other states have is the regulatory process. We do not want to get caught in a "catch-22" where we are fighting each other and the regulatory process becomes redundant. There are two sets of people and groups.

**Rose McKinney-James, representing The Solar Alliance, Las Vegas, Nevada:**

I want to follow up on the observations Ms. Stokey shared with you. Many of the members of The Solar Alliance are involved in a variety of states, and they are very active in California. They are very concerned about the potential for layering or multi-jurisdictional problems, particularly relating to planning and permitting for renewable projects. To the extent that we are given the opportunity to provide you with specific examples, and perhaps some specific recommendations on how to structure that, I would be happy to do that. As I indicated to you, we are very supportive of having an independent entity to deal with broader energy policies. I think it will be very efficient to integrate the work the Task Force has done. We also need to create some resources for the Energy Office. I think there is an opportunity for the state because we are going to see increased activity in this arena.

I would be happy to work with Ms. Stokey and the subcommittee to come up with some additional suggestions in that regard.

**Chair Kirkpatrick:**

That was the way that I envisioned it. They should complement each other and not work against each other.

**Assemblyman Christensen:**

As people discuss coming up with new language, I am wondering how to get additional help to increase my knowledge. What is the process? Will they give everything to the Chair to disburse it? Do I contact people individually?

**Chair Kirkpatrick:**

The more insight they can give you and us, the better. We have been working with Mr. Bobzien and Ms. Leslie. I would like to see it in writing. I am a visual person and want to be able to put it all together; plus it helps our staff.

**Assemblyman Christensen:**

Will each of us receive a copy of the written materials that are provided?

**Chair Kirkpatrick:**

Yes.

**Assemblyman Conklin:**

We are under a strict deadline. If you have offered to provide things to us, we need those immediately. We have only ten days before this bill has to move. The sooner the better; it just gives us more room to deliberate and make tough decisions.

**Assemblyman Christensen:**

Does this subcommittee have a deadline for reporting to the Committee?

**Chair Kirkpatrick:**

We need to report back by next Wednesday.

**Gail Tuzzolo, representing Nevada AFL-CIO, Las Vegas, Nevada:**

I am standing in for Danny Thompson today. There is one element that I would like to put on the record, because he would be interested or concerned about it. By law, labor has an ability to participate in the Governor's Task Force. Granted, this is like apples and oranges, but it has been of value in order to protect workers' rights and to educate people about available apprenticeship programs and training programs that play a role in renewable energy. I just want to remind you of that.

**Chair Kirkpatrick:**

I am going to ask Ms. Leslie to come down because I think we talked about having advisory groups that would work together. Could you address how some of those Task Force advisory positions would not go away?

**Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:**

The idea is that the Energy Commission would be made up of three commissioners, but we would have an "advisory body" level. We struggled about whether to actually write that into the bill. We decided, in consultation with legal counsel, that the Commissioners would be free to set up any advisory committees they wanted and it would be unusual for us to prescribe that. But, if we needed to clarify that, we certainly could. One of the problems with the Renewable Energy and Energy Conservation Task Force is that it is comprised of volunteers. Members cannot always come to meetings. Some of them have conflicts because of their own businesses. We felt that the Commission, having full-time Commissioners, would take some of those problems away. There is a need to have technical expertise. We anticipate that they would set up several advisory groups. They might have a separate group for renewable energy producers so we could learn their concerns. They could have a separate group for labor. They could reestablish the Renewable Energy Task Force as it is constituted now, as an advisory committee. I am open to having language in the bill that specifically authorizes that, but it is not needed. It may make people feel more comfortable.

**Chair Kirkpatrick:**

The Legal Division told us that if we specified one task force then that would be all the Commission would get. We were hoping to leave it broad. If we need to set minimum task forces to deal with these issues, then we could always do that.

**Assemblywoman Leslie:**

The more I look at it, the more I like the Energy Commission.

**Chair Kirkpatrick:**

Does anyone else have any questions through section 16? We are going to go to sections 17 through 21. Are there any concerns?

**Dylan T. Shaver, representing the City of Henderson, Nevada; and representing the Nevada Conservation League, Las Vegas, Nevada:**

We have concerns with section 21, subsection 4, paragraph (b). Under current law municipalities and counties are allowed to adopt standards different from the State Office of Energy when it comes to the International Energy Conservation Code (IECC) and the building code. This bill requires adoption of more stringent standards, which we support. We do not support, however, having the Commission approve these more stringent standards. Right now we have a long and involved process, with community stakeholders and business interests, through which we occasionally adopt a more stringent standard. In fact, in southern Nevada there are 20 amendments to the IECC that have been adopted by the county and by the various municipalities but the state as a whole has not adopted. We feel that the process is working as is. We have submitted amending language ([Exhibit D](#)).

**Chair Kirkpatrick:**

Are there any questions from the Committee? The thought was that there are many jurisdictions that have no building standards and no building codes. We were trying to keep it consistent.

**Assemblyman Conklin:**

Who approves or certifies that your standards are higher?

**Dylan T. Shaver:**

The current standards are above and beyond. Currently, the 2006 IECC is adopted, and we have adopted additional standards. So, they are automatically more stringent.

**Assemblyman Conklin:**

Nobody certifies or governs this. The assumption is that your standard may be higher in one area, but may cause a problem in another, but no one ever checks to see if that is the case.

**Dylan T. Shaver:**

I do not know the answer to that question. I can find an answer for you. Perhaps Lisa Corrado from the City of Henderson has the answer.

**Lisa Corrado, Redevelopment Project Manager, City of Henderson, Nevada:**

The process currently has certain amendments that may not necessarily be above, but are different from the IECC. For example, casinos are addressed in a certain way. I am not a building code professional, but our Director of Building and Fire Safety stated they work through a regional process with all entities in southern Nevada. They work as a technical committee with industry

professionals, and then all of the southern Nevada entities adopt, via ordinances, the same language.

**Assemblyman Conklin:**

So, you adopt the minimum standard, then you adopt another standard that you believe is more stringent, but no one has done an impartial study to see if they conflict. What are the standard rules?

**Lisa Corrado:**

I do not know the answer to that. It is not necessarily that they are more stringent; they could be. But they are different or not addressed in the IECC so they could be interpreted as being more stringent.

**Assemblyman Conklin:**

Or, they could be interpreted as being less.

**Lisa Corrado:**

They could be. I do not believe anyone governs this, right now; that is why we brought the issue up. No one tells us they are okay or not. We take those IECC standards as a minimum and then work out our standards.

**Assemblyman Conklin:**

And Mr. Davis is now laughing because he knows exactly where I am going.

**Kyle Davis:**

You bring up an interesting point. I did have, in my amendment, language similar to the City of Henderson's. Our idea was to adopt more stringent standards and not have to go through a Commission that may not like them. I would like to double check to make sure that there is some kind of verification. We would support the idea that more stringent standards should be adopted.

**Assemblyman Conklin:**

I do not know if the language in this bill is right; perhaps it creates some rulemaking problems for cities and counties. But what I know is right is that somebody should not be the judge, jury, and executioner over their own rules in deciding whether they comply. There ought to be some standard that people are held to because they could be wrong, and we do not want to be wrong when it comes to the standards. We are trying to encourage growth with these standards.

**Kyle Davis:**

Perhaps we could do something like allowing them to adopt more stringent standards, but it would need to be verified. It would not be that the

Commission could disapprove higher standards. The default would be that if it is a higher standard, the Commission would have to approve it, but they would verify if that was the case.

**Chair Kirkpatrick:**

I believe that in our performance contracts through NRS Chapters 332 and 338 where local governments have the ability to obtain energy efficiency bonding; those standards do specify that they have to meet the International Energy Conservation Code. What is the difference? I think this is already in statute. How do they get that certification?

**Kyle Davis:**

You are right. This did come up in our discussion about green building. I will see what I can do to get you more information.

**Chair Kirkpatrick:**

Thank you. I know we have had this discussion before.

**Lisa Corrado:**

The bill does not say what the basis would be for approval of any more stringent standards. For example, if we wanted to use a certain quality of insulation on a building, there would be some way to approve that quality.

**Chair Kirkpatrick:**

I think the thought was to have a regulatory process. I believe for the stimulus money, one of the caveats is that you have to have a long-range energy efficiency program. It refers, I believe, to this particular standard.

Is there any other testimony on this portion? I see none. Are there any concerns with sections 22 through 26 which change definitions? Are there any concerns with section 27?

**Kyle Davis:**

I have some questions about sections 26 and 27 concerning the Trust Fund for Renewable Energy and Energy Conservation. The bill covers a lot of things previously administered by the Task Force. Is it the intent that the Trust Fund would fund the operations of the Energy Commission?

**Chair Kirkpatrick:**

I do not believe that is the intent. I think these sections of the bill would deal with having a portion go to defer the rates of our utility. I think this was a piece that was already passed in 2001. We need to set up a separate fund because, recently, a New Mexico case stated that the fund had to be separate. Because

we already had language within the Task Force, we decided that this fund would be a place to put that money.

**Kyle Davis:**

Another clarification question concerns section 80, where all taxes are deposited into the Trust Fund for Renewable Energy and Energy Conservation.

**Chair Kirkpatrick:**

Section 27, subsection 1, paragraph (c), offset the utility consumer costs. That is why that trust fund had to be completely separate. In 2001 this trust fund was already created for the Task Force to have that ability. So rather than create three different funds, we utilized the one that was already in place. I would be more than happy to clarify.

**Kyle Davis:**

What is the intent for the operation of the Nevada Energy Commission; how would that be funded?

**Assemblywoman Leslie:**

I do not think it is in the bill, but through the discussions that we had, the idea was to absorb the Energy Office and use that funding plus a small portion of the production fee to help support the Commission. Obviously, if this bill makes it through the Committee it would have to go to the Ways and Means Committee who would identify those costs and any deficiencies.

**Chair Kirkpatrick:**

Does anyone else have questions or concerns about that? I see none. We will continue with sections 28 through 30, are there any concerns?

**Tom Clark, representing Cogentrix Solar Thermal; and representing Sempra Energy, Carson City, Nevada:**

The part that has us most concerned is section 28, subsection 4, paragraphs (a) (1) and (b) (1) which has a requirement that at least 30 percent of the materials used in the construction of the facility must be purchased in Nevada. How do you quantify at least 30 percent of the materials? Is that based on the gross amount of the cost of the materials?

I was at our facility on Friday, and having looked through this bill, we have basically a very simple facility. We have solar panels that are currently assembled in Arizona. Those solar panels are propped up by a steel post and a metal bracket. In looking at the sheer mass of it, 95 percent of our facility was purchased from a company in Arizona. We would love that company to move to Nevada, but we cannot force them to do that. They are already located near



us. If they were in Spain, we would have a better chance of them expanding to Nevada. When you look at the mass of a facility and the way it is constructed, how do we come up with that 30 percent? Is that on a project by project basis? For example, with a geothermal company which is pipes, concrete, and wire, versus a solar company which is solar panels, steel, and wire, how do we get to that 30 percent?

**Chair Kirkpatrick:**

When we talked about Leadership in Energy and Environmental Design (LEED) standards last session, one of the major requirements was that you had to buy almost all of your materials within a 500-mile radius.

**Tom Clark:**

We only have one manufacturer in Nevada. I have asked my company to tell me where we bought the steel and the nuts and bolts so that we can determine what percentage of our materials did, indeed, come from Nevada.

**Chair Kirkpatrick:**

We have to create the industry for the manufacturing. I researched how Southern Nevada Water Authority did it, and 150 different businesses came online directly related to the landscaping business when the Authority started that program. How can we bring other businesses here? If you want a different percentage, I would be okay with that. If most of the facility is going to be concrete, it would not be cost effective for you to bring the materials across the California border. The whole purpose is to do as much as we can within our state to help bring other industries online.

**Tom Clark:**

Absolutely, and we support that as well. We need to find a good number. I thought our panels were mounted on a concrete pad, but they are not. The steel is actually a girder identical to the one that you see on the side of the road used by the Department of Transportation to put up mile marker signs. It is just driven into the ground, and we bolt the solar panel bracket to it.

I have some other testimony in regard to the abatements. In the Senate yesterday I tried to draw out a comparison. When Sempra Energy was looking at developing their facility in Boulder, one thing they really wanted was the land. They also needed an anchor tenant that was tied directly to transmission. Sempra operates a natural gas plant in Boulder City. They also operate a natural gas plant in Arizona. The plant in Arizona owns more than 2,000 acres surrounding that facility. Using a model, they plugged in the taxes, information, data, and costs related to both states. Because the abatement was in Nevada, Nevada bubbled to the surface as the place for them to do these projects. That

is a scenario where my client was analyzing which was the best state to "bottom line" these projects. The transmission to California is just as easy from either states, so the question is, what is the basic cost? I am glad that the abatements are here. Sempra is now going to expand that project.

We are constantly asked, what does Nevada get for all they give on these projects? Nevada gets 130 employees, and 65 percent of those employees came from Nevada. Twenty of those employees were with the International Brotherhood of Electrical Workers from Las Vegas. Outside of the jobs, we write a check for a little over \$100,000 a year in property taxes. Boulder City receives lease payments for the land that we use. Just on the ten megawatt project, which is 80 acres, they receive a little over \$160,000 a year. That is not including the portion of the use tax that we still pay, or the tens of thousands of dollars that we have given the City of Boulder to help with their charitable programs, because we want to be the good neighbor.

I hope that while we are going through this bill, we do not forget the fact that checks are still written to the state and that there is still a benefit from these types of projects even though we do receive the abatements.

**Assemblyman Conklin:**

I think we need to put things into perspective. The Chair has indicated that she is open to suggestions. We think you have an obligation to help us get where we are going. We are doing the best we can to look out for the constituents of this state and the limited resources that we have. You bring up a terrific point: that land is being used for what you do. I wonder if I could have used that land for something else that maybe would have generated more revenue for the state. We do not want to argue that point. We want to be known as the sunshine state, not for the same reasons that California is, but because we have renewable energy and other programs beyond any other state's wildest dreams. It requires the right incentives. But it also requires incentives that are thought out, that do not only look at what pencils out today, but what pencils out in the long run for everybody. That is the position we are taking. It is not enough to say you have a problem with it; we need your help to tell us what that incentive should be.

We are not experts, but we know what is good for our constituents, and we know what is good for our state. It is not enough to say we are open to suggestions; we need help. Please do not say, "that will not work," but tell us what will work. Help us get to where we need to be for the people of our state, and that will help us all.

**Chair Kirkpatrick:**

Mr. Clark did give us a suggestion on property taxes. A previous bill from the 2005 Session complicated property taxes in general. I think we need a simpler way.

**Assemblyman Conklin:**

I was only trying to be very clear that we need more than we are getting right now.

**Alfredo Alonso, representing Ausra Solar, Reno, Nevada:**

The Assemblyman's point is well taken. I think we will work together to give you some ideas. The most important issue for everyone to understand is that the baseline is our current abatement. Right now we have two studies which will be released on Monday which show that our current abatement makes us competitive. It does not make us better, or worse, just competitive. That should be a concern. If the goal is to bring this type of industry en masse to Nevada and bring about everything that goes with it, what you want is an entire industry. You want all the vendors, the transportation people, the manufacturers, and all the support people. All of that generates tax revenue for the state and ultimately creates this industry. I think it is important to understand that as expensive as these plants are, the abatement is extremely important.

I understand the concern with respect to the mill tax portion of this, and I have heard that you are picking on renewables. I think we can help you come up with some policy that may work across the board. Again, those abatements are incredibly important, and in some cases you may get more benefit if another type of business goes on private land. I think, however, what we are talking about here is federal land, where the only thing you would get is mining rights. Again, you are creating an industry where there cannot be an industry but for this type of situation.

I think it is a win-win situation for the State of Nevada. We can help form some of that policy, and perhaps we need to be more aggressive at this point.

**Chair Kirkpatrick:**

I understand the upfront costs. The state is taking the risk that you do well. I want to think this all the way through hypothetically. I would like someone to provide me with a hypothetical project listing of all the fees and costs, so we could actually see it. Also note that it would be an incentive if we could streamline some of the permits once a project gets approved through the federal government.

**Alfredo Alonso:**

I agree with you. There could be other ways to save these companies money, for instance, finding a way to make it easier for them to bond. These projects are financed, and the costs are huge on the front end. Perhaps we could stagger some of these abatements. I think we can help you work some of that out. Mr. Clark had an idea with respect to the property tax portion of the abatement. Maybe we could take a percentage of that and use it for other things, perhaps for ratepayers to get the prices down. We are willing to help and will get you the information quickly.

**Assemblyman Conklin:**

One of the things that makes all abatements very difficult for us is that many abatements are revenue sources that have specific allocations to things that are critically important to the state, like education. It makes it difficult if you are abating a certain percentage of sales tax, which is a direct cost to the Distributive School Account (DSA). We have a fiduciary obligation to fund at a certain level. It is a double hit to the general revenue fund, and it goes against some of the state's missions. I am not saying you cannot use that tax, but when you are working through it, those are things that we have to consider. How do we preserve what needs to be preserved? We need to look at all our possibilities and not hurt the budgetary process.

**Alfredo Alonso:**

I agree with you. Education is extremely important. These companies are looking for a workforce that ultimately comes from Nevada and addresses all the needs of this new industry. What is important to note with respect to the DSA portion is the fact that if we put new businesses and new plants on federal land, they would not be getting the DSA anyway. We need to find a solution that addresses all of the issues but keeps in mind the fact that when these plants are on line they have very few employees. They will bring in a lot of tax revenue per employee which is what you want, but they do not place a stress on the state's services. We want more of that.

**Chair Kirkpatrick:**

The public perception is that we are giving 50 percent away and we are lacking in education. In order to change that public perception, we have to be creative. We have seen abatements in the past result in unintended consequences, and maybe those businesses are not doing well. If you are going to take the abatements, the public will need to understand that you created this many jobs and you created this amount of revenue. At the same time, we cannot let the headlines be, "Business got 50 percent, and schools got shafted."

**Alfredo Alonso:**

I agree. We will need to educate the public. Our studies show that a 100 megawatt plant over the life of the plant will bring in over \$33 million. That is significant.

**Rose McKinney-James:**

We are delighted to see this much emphasis placed on renewable energy, and in particular solar. I have been working with you for a number of years. I think the discussion is continuing to talk about building an industry in this state; an industry that achieves some significant economic development goals and benefits the state.

I do not think we have the luxury of "cherry picking" at this point. We need to look at the opportunity to build the entire industry. When you look at section 28 which talks about new facilities for generating electricity, there is the issue of eligibility. Right now the eligibility is based on a renewable energy system generating at least 10 kilowatts. The abatements do not apply to residential property and they exclude residential solar systems. I would like to bring that to your attention because, as you know, the Solar Alliance has membership that includes companies which have large-scale and small-scale work, with an emphasis for the Alliance on distributive generation. It has been our view that it creates a significant opportunity for job creation on day one. Those would be sustainable jobs. We would like to recommend that the tax abatements be available to generation that is sold to another entity. As an example, we are talking about wholesale generation, as opposed to distributive generation, without regard to size.

We would also like to explore the possibility of extending abatements. Again, 20 years and 75 percent of property taxes and 5 years and 100 percent of sales taxes, as a two-year horizon, still creates a challenge for a business. What we are trying to do in creating this market is to also provide some certainty for the developers. As you know, from day one, my emphasis has been on all solar generation, and I think the large solar facilities pay substantially more in property and sales taxes than fossil fuel generators. Solar takes up more land area and requires more equipment. Some equity needs to be discussed.

The other part of this section is the requirement of purchasing local goods. We need to set a goal of some kind, because the reality is we have some small components. The significant components are going to come when we set up the right incentive to attract large-scale activity in the state, because manufacturing will follow. In order to create efficient projects, they will need to have greater proximity to the components and everything that goes with it. That has been our goal going back many sessions. Rather than create a barrier

to the ability of these companies to be successful, we can achieve some balance. I believe that we need to have a local connection. I am not sure we can achieve it with the language that is in the bill.

**Assemblyman Christensen:**

You made a comment about "cherry picking." I want to be certain I understand what you mean by that.

**Rose McKinney-James:**

My point is it is very easy for us to look at the potential that a large-scale project is going to bring. We are very fortunate because we have some outstanding projects in Nevada. I do not want us to lose sight of the potential on the other side of that equation which is distributive generation—roof top for residential small-scale commercial/industrial—because it is our view that there is a significant economic development benefit, including job creation, associated with distributive generation.

**Assemblyman Christensen:**

That last piece deals with the smaller projects?

**Rose McKinney-James:**

Correct.

**Assemblyman Christensen:**

Thank you for sharing that. You added an element that I did not know you were going to address. Concerning subsection 4, paragraph (1), on page 15, line 5 in the section dealing with the 30 percent of the materials, you said there is a concern about getting 30 percent of the materials in-state. Is that an issue right now because we do not have a lot of distributors here?

**Rose McKinney-James:**

You will probably have to direct your question to Mr. Kern from NV Energy. I think we all know the reality is that in state we do not have what we need right now in terms of in-state materials. That is not to say it should not be a goal because that is the benefit that we are looking for. We are simply saying that to put this in the bill and make it a requirement at that percentage right now could be a challenge in terms of achieving what you are looking for going forward.

**Chair Kirkpatrick:**

The 10 kilowatts is currently in statute. That is the abatement that expires in June.

**John W. Griffin, representing Solar Millennium, Reno, Nevada:**

We do not have much more to add that has not been said by the three previous speakers. We are currently working on some hypotheticals. I think the issue is we have to work within the existing tax structure in Nevada. You can call it abatements or incentives, but we have to determine how to appropriately tax this industry. Comparing our situation to other states that have a corporate income tax and other structures that we do not have makes it more difficult. We are trying to work through those issues. We are trying to make sure that Nevada is competitive.

At the end of the day, it is not just about the money. Corporations do not incorporate in Delaware just because it is the cheapest. It is not that expensive, it is reliable, the structure is there, and it is predictable. It is about the big picture.

**Chair Kirkpatrick:**

It is great that the whole industry is here, but everyone represents different portions of the industry, and it is important that each of you give us a hypothetical. What works for one may not work for another. I have not heard from anyone about wind. I know it costs very little to bring them here. They could manufacture their blades here. Maybe a portion of this should be based on what type of industry you are.

**John W. Griffin:**

We would be happy to run the hypothetical models we did in Arizona and Utah, and I am sure everybody else could do the same.

**Paul McKenzie:**

One of the industries that has abused this abatement process more than anyone is the geothermal industry. I do not see them in the room. With that comes an issue of the need to watch any abatement. The solar industry is not the main abuser of abatements. During construction, companies are given abatements and they are using out-of-state contractors and paying substandard wages during the construction phase. And once the project is completed, employees do not receive an industry-standard wage and benefits which would warrant a company's getting that abatement.

Part of the abatement breakdown is that the wage is set by DETR, but that wage is not comparable to the job performed. Currently, the wage is \$19 per hour whether you are a warehouseman or you are operating a geothermal plant. It is not reasonable to have somebody who needs to have a skill level to operate a power plant be making the same wage as the man stocking boxes in a warehouse.

There are two areas we need to address. First is the construction phase; addressing the construction workers to make sure we use local workers and local contractors to build these projects, and paying a living wage on that part of the project. This is public money, and there is no reason why that portion of the project does not have prevailing wage requirements. And second, of even more benefit to the state in the end is that jobs need to be paid a living wage with benefits.

**Chair Kirkpatrick:**

I know we have thresholds within economic development. You have to produce a certain amount of jobs at a certain wage or higher. In the Government Affairs Committee tomorrow, we will have a presentation and walk through an actual incentive to see how it works. I have been working with economic development to set those thresholds but within this bill, there is an accountability measure. In order to get your second year property tax abatement, you need to tell us what you did. That gives us some actual data for the history of how economic development works.

**Paul McKenzie:**

These poor solar guys are being beaten to death, and the geothermal industry has been using these abatements more than they have. They should be here talking to you.

**Chair Kirkpatrick:**

Unfortunately, this bill does not affect them.

Are there any concerns with sections 31 through 59? I see none. We are going to go to section 72. Are there any questions on that section?

**Charles Benjamin, representing Western Resource Advocates, Carson City, Nevada:**

I just want to address section 62. [Distributed a chart ([Exhibit E](#)).]

**Chair Kirkpatrick:**

There is already an amendment on section 62, and Assemblyman Bobzien can explain it first. The main reason it was in that section is because of the stimulus money; there had to be some reference to decoupling.

**Assemblyman David Bobzien, Washoe County Assembly District No. 24:**

I do not have the proposed amendment with me, so I will go by memory. There has been a lot of discussion in recent weeks about the stimulus package and what exactly is required of each state to receive money. The first part we have already discussed; that is the adoption of model building codes. The second



part is more along the lines of nailing Jello to the wall when it comes to the requirements are. I have heard any number of perspectives on what exactly the Stimulus Act requires. But our understanding is that the state is obliged to provide assurance that we are moving toward a decoupled market. In the language of the Act they do not even use the word "decoupled," but that is what they are referring to. In the initial drafting of the bill, we included this section which does just that. We have since decided this is such a large policy issue to undertake in a bill like this, that we would hold back from that and go more towards a study. We would like to be in a position to provide assurance that we are moving toward a decoupled environment.

**Chair Kirkpatrick:**

That is also what I remember.

**Assemblyman Christensen:**

The amendment that you are referring to . . .

**Chair Kirkpatrick:**

It has not been written.

**Charles Benjamin:**

I was going to speak to the section the way it was, but I understand. What I have distributed is a chart that shows per capita electricity consumption in selected western states in kilowatt hours per year. The message is not that Nevada is at the top, but that California's decoupling mechanism, which is considered to be the model and which has been in place since the mid 1970s, has had an effect. California's per capita energy consumption basically leveled out in the mid-1970s.

**Assemblyman Christensen:**

Mr. Benjamin, what is decoupling?

**Charles Benjamin:**

I refer to decoupling as described in section 62. All I am saying is that California did this many years ago, and it seems to be working. I have a caveat; it does not mean that their total energy demand is not going up, because their population is going up.

**Assemblyman Christensen:**

So, as a state, total demand has gone up, but the per capita amount has leveled.

**Charles Benjamin:**

Right. This is considered a model for how decoupling can work. You move toward it, or study it, and we already have this system with natural gas in this state. There is a reason why it is in the stimulus package. It is called a soft requirement. I hope this chart is helpful.

**Assemblyman Conklin:**

Mr. Benjamin, I need to be careful when I look at data like this because it shows per capita electricity consumption. Did you add in 250,000 people a day who are on the Strip who are not residents? Is this all the energy generation and all the people, or is it just residential? We consume a lot of energy, but a lot of it is not for our residents; it is for the industry which is our prime industry. Sometimes these numbers are misleading. I think for purposes of what we are trying to accomplish, we probably need to delineate to some extent who is consuming what. I am not knocking the graph. I am just making a data observation about the potential.

**Charles Benjamin:**

This was not meant to knock Nevada. The main point of the graph is that what California has done seems to be working. Obviously, every state is a little bit different. Nevada does have idiosyncrasies about businesses that stay open 24 hours a day, 7 days a week, with lots of lights.

**Gregory A. Kern:**

We also have interest in section 62. Decoupling is an interesting thing and it can be done in many different ways. These words speak to a broad decoupling that may work in California and might even work with gas here. It looks like this verbiage is taken from the gas language that was enacted in 2007. Electrical utilities are different from gas utilities. What might work there is a more surgical decoupling. We could decouple completely by just taking all the usage, dividing it by the number of people in the state, and getting a flat bill, no matter how much energy someone uses, no matter how hot or cold it is. There are places in the south where they have that. The utility completely takes all the weather risk, the economic risk, the energy efficiency risk, and everything else. Or, you could go the other way and pass all the risk to the individual. That is called real-time pricing. Whatever the utility pays is what the customer would pay. The type of decoupling we think would help in Nevada is decoupling that would just make the utility aligned or indifferent to the energy efficiency measures that the utility takes.

**Chair Kirkpatrick:**

Are you comfortable with it going to a study and, over time, looking at the process?

**Gregory A. Kern:**

We would have to read that verbiage, but if the study involves a couple of years, I would not think so. It is something we would want to resolve sooner or later either by statute or regulation.

**Chair Kirkpatrick:**

What I do not want to do is put something in statute that will tie our hands going forward and will be too hard to undue. That is why we think studying it is the way to go.

**Rebecca Wagner, Commissioner, Public Utilities Commission of Nevada:**

I cannot speak for my other fellow commissioners, but from my perspective I would like the opportunity to be able to take a look at it, and I can appreciate Mr. Kern's concern that we do not want to look at it too long. I am a fan of giving the Public Utilities Commission of Nevada (PUCN) a deadline in which we need to complete what we are told to do by the Legislature. I would feel more comfortable with just some internal discussion. We need some time to figure this out. I do not know if we have all the expertise on staff to sort it out to come up with a program. Gas is one thing, but electric is significantly larger and a bigger deal. I would support adding something to study decoupling with a time certain.

**Chair Kirkpatrick:**

Does that work for you, Mr. Kern?

**Gregory A. Kern:**

Are the timelines six months or two years?

**Chair Kirkpatrick:**

We do not come back for two years, so we could not do anything anyway. We are not giving them the ability to go ahead and do it. Would two years be too long to look at it over the Interim?

**Gregory A. Kern:**

Two years is a very long time. The world has changed significantly in the last year.

**Chair Kirkpatrick:**

What would happen if the PUCN said a study was something they could do? They would still have to come back to the Legislature to do it, correct?

**Gregory A. Kern:**

I do not know. This language is fairly fresh, and we have not seen the proposed language, and the decoupling issue from the federal government is 45 days old. We have studied a lot of decoupling, but the changing environment, as far as growth stopping in Las Vegas, and all of these factors are very fresh and very new and are creating an interesting situation.

**Assemblyman Conklin:**

We do not seem to be able to get an answer from you. What we are proposing is that we ask the PUCN to do a cost analysis and provide us with a recommendation on whether decoupling is something we should or should not consider. That would be two years down the road. That sounds reasonable to me.

**Judy Stokey:**

One of the issues we are concerned about if it does take too long is that there is a lot of money on the table. The company is concerned about that. I am not sure how to fix that. I do not know what the time frame should be, but we will definitely get back with you on what will work.

**Assemblyman Conklin:**

It is not that the concept of decoupling is bad. The provisions in the bill are very loosely written. We want to take steps forward, but we also do not want to take steps that cost us in the future. Based on our last experience with decoupling, I think we would feel a little more comfortable keeping a certain amount of authority in the legislative hands to make a final decision.

**Judy Stokey:**

I understand that. A suggestion might be: study decoupling over a period of time, but not too long, and then have it come back to the legislative commission. Get it authorized that way we do not have to wait two years.

**Assemblyman Conklin:**

That might be workable.

**Rebecca Wagner:**

One thing I should note for the record is that it is my understanding that the Commission submitted background information to the Governor regarding the assurance letter and the portion about decoupling. The Commission determined that there was enough decoupling in statute, right now, to meet what is required by the stimulus bill. I think having something more specific in statute and directing the PUCN to go in that direction with the utility is even a better idea. I feel more comfortable with having you tell us what to do. I like

Ms. Stokey's idea that we study it for an amount of time, and have permissive language that if the Commission can come to a point where we can recommend it, we could take it to the legislative commission and let them know.

**Chair Kirkpatrick:**

Will there be guarantees that consumers will be protected in the whole process?

**Rebecca Wagner:**

You would have to ask Mr. Witkoski that. Concerning balancing the interests of shareholders and ratepayers, yes, they would be protected.

**Eric Witkoski, Consumer Advocate, Office of the Attorney General:**

We worked on the gas decoupling last time, and there was no interest at all from the electric companies. They did not talk about it; they did not want it. All of a sudden when we are looking at a recession and declining sales, decoupling looks pretty good. I think you need the two years to study it, because there will be a lot of rate things going on. And consumer acceptance is a big thing that has to be considered. We have not done that yet with gas. That will be filed in April, and it will go into effect next winter. It will take some time for consumer acceptance. I think a better study of electric decoupling and coming back in two years is good. We can see how the gas works and see if we are comfortable with it.

**Chair Kirkpatrick:**

Ms. Stokey, if you could provide us with the cost on your side if you had to wait and what preparations you would need to do that. I would rather take it out of the bill than make a mistake.

**Judy Stokey:**

We will get you something.

**Rose McKinney-James:**

With respect to this component, we are fine with the amendment as it has been described in terms of the study. We are not weighing in on the time frame. This is another instance where we were hoping you could expand the language to take a look at decoupling revenues from the consumption of distributive generation. This would be in addition to energy conservation. Perhaps that is something the Commission could consider.

**Chair Kirkpatrick:**

I am trying to understand. How can we have you look at it without us telling you that you have to look at it? During the Interim, I look at a lot of possible legislation that I would like to see. I do a little research to see how it will work

out. Is it because it is a cost factor, spending the staff hours to do that, or how does that process work?

**Rebecca Wagner:**

If you were to so direct us, then we would open up a docket, an investigatory docket, and that process can go a number of ways. My preference is to try to pull all the parties together, have them file comments, and then you have a series of workshops to try to get the feedback and all the different elements of analysis.

**Chair Kirkpatrick:**

Is that where the cost comes in? Someone has to pay for the workshops, right?

**Rebecca Wagner:**

Rulemaking costs us money. A large part of my caseload is driven by rulemaking. It just depends on how you want to do it.

**Chair Kirkpatrick:**

I want to understand where the costs are.

**Rebecca Wagner:**

The cost of just reviewing it would be the cost to the Commission, our staff time.

**Chair Kirkpatrick:**

Then I want to understand what type of things other interested parties would have to provide which might be costly. For example, if I go before a planning commission and I want to sell you my project, I have to spend \$10,000 to give you the nice drawings so that you can see what I am trying to do. Is that where the costs come in?

**Rebecca Wagner:**

There are costs for the parties who would participate. It would be largely driven by our Commission staff, the utility, the Consumer Advocate's Office, and any other interested parties. They would potentially hire a lawyer and experts and consultants. There is a cost to studying it. I am not sure how you could do a study without somebody investing something in it. There is a trade-off with that.

**Chair Kirkpatrick:**

Are there any more concerns with section 62? I see none. We will go ahead with section 74. Are there any concerns?

**Rose McKinney-James:**

In addition to the section by section review, this is more of a process question. When we took a look at this bill, we also found a couple of areas on which we would like to make some recommendations. The one thing we would like to get on the record is we would like to see a definition of distributive generation. That is something we could work on. We have some other minor adjustments. We can put it in written form and submit it to you consistent with some of the other things that we have been requested to do.

**Chair Kirkpatrick:**

I would have to ask Legal where that would appear in the bill.

Are there any concerns about sections 74 through 79?

**Joseph Johnson:**

Germane to the bill as drafted is a definition of biomass. Looking at the legislative history there has been testimony in other bills that deal with municipal waste. Municipal waste does include the biomass as previously discussed. It does not need to be addressed there. The reason I am testifying is that in general you have a number of definitions in various sections. Some sections just state "water power," for instance. Under the portfolio standard you have a very rigorous definition of water power.

Fuel cells are the issue I would like to bring before you today. In section 77 you define "fuel cell" in a way that would allow fuel cells driven by natural gas. That is the typical way of driving—the hydrogen is produced from natural gas—and probably would not qualify under the exclusion in section 78 where you have fuel cells. The fix would be just deleting section 77 and including fuel cells that use renewable energy as a fuel. That is what we are really after. It is to stimulate renewable energy, not another method of conversion of natural gas to electricity. I could prepare a written proposed amendment if you like.

**Assemblyman Conklin:**

I know technology exists that takes trash, super heats it—the byproduct of the super heating is a carbon char and some hybrid form of methane gas which is then burned—turns a turbine, generates electricity, has no air emissions, and the ultimate byproduct is a carbon char which can then be put back in the soil. That is just as renewable. I want to make sure what you are suggesting does not hurt that possibility as a renewable. It is a recyclable as well as a renewable.

**Joseph Johnson:**

I believe municipal waste is the qualifier that would include that. I cannot conceive of a waste that is generated that would not be listed as municipal waste. If we are going to address the definition, one should have consistency throughout the area that we are dealing with. I do feel strongly about the fuel cells not being renewable when they are fueled by natural gas. As far as the issue of alternative technologies are coming forward, we certainly do not want to restrict them.

**Chair Kirkpatrick:**

I will ask Legal, because I know we have to include them all. We might have to change a lot of statutes.

**Charles Benjamin:**

We have a concern with just one word in section 74; that is the word "wood." We do not want to open up the possibility that my colleagues in New Mexico have seen in which a developer promoted a biomass plant that would have cleared huge pinion pine and juniper stands to feed a 30-megawatt biomass plant. We have some alternative language that would be very simple and would clarify that you cannot cut down virgin stands of trees in order to feed biomass.

**Chair Kirkpatrick:**

We have had this in statute for about seven years. We tried to use language that was already in statute.

**Charles Benjamin:**

My organization operates in all the mountain states, and we have seen some problems. We are in favor of biomass, but we do not want to give anyone an excuse to cut down virgin stands of trees and call it wood. One of my colleagues in New Mexico has suggested some alternative language, and I can get that to you as quickly as possible.

**Chair Kirkpatrick:**

Are there any concerns with sections 80 to 100?

**Dino DiCianno, Executive Director, Department of Taxation:**

The Department is neutral with respect to these provisions within the bill. As you know, we would have the responsibility of the administration of the excise tax. We have been asked by the Legislative Counsel Bureau, Fiscal Division, to conduct a fiscal note. We have not completed it yet. What I can tell you is that with the development of a new excise tax for the Department to administer, there will be some computer programming charges. We will make



that part of the fiscal note. If we have sufficient time, we should be able to put this in place.

**Chair Kirkpatrick:**

We made sure we gave you ample time to enact this. Is there anything we need to do as far as the accountability portion to have you administer it?

**Dino DiCianno:**

You have allowed the Department and the Tax Commission to promulgate regulations with respect to the administration. That is normal with any tax. If I am to understand correctly, the effective date of this part of the bill would be January 1, 2010. That may be a little tight, but hopefully, we can work within that time frame.

**Chair Kirkpatrick:**

I understood that the tax would be effective January 1, 2010, but it would not be due until July, 2010.

**Kyle Davis:**

Before I get to my proposal, I would like to speak about the League's thinking on this specific issue. Just to reiterate why we get involved in these issues in terms of renewable energy, it is because climate changes are real things happening right now, and most scientists are seeing that they are happening even faster than we first thought. Most global warming and green house gases are coming from energy production. The real solution is the development of renewable energy and rapid energy efficiency. In a sense, the world needs Nevada to be successful at this. We need to be able to help the rest of the world in terms of reducing our carbon footprint.

We strongly support the creation of the Nevada Energy Commission because we believe it will do a lot of good things. We think it is right for the state to take a look at planning for the future. I think it will give a good opportunity for consolidation of ad hoc programs or programs in other areas which may work well together if they are all under the same roof. We are hoping it will provide some services in terms of developing renewable energy, whether that be one-stop shopping for some of the things that may happen in other areas, or the ability to work on transmission issues that would not require having to go through the ratepayers.

Getting to the issue of the excise tax, we support the idea of funding this Commission. At this point it is appropriate to talk about where that money should come from to fund that Commission. We do not support a tax only on renewable energy. There are only a few industries in our state that we tax right

now. An industry can come into our state that does a lot of polluting, and they would not be taxed right now. We would not support the idea of taxing an industry that has environmental benefits.

Our solution is in the last part of our amendment which is to extend this out. Rather than just tax renewable energy, we should tax all forms of energy production. We should spread this tax around because everyone has a stake in funding the operations of this Energy Commission. There is nonrenewable energy production in our state that serves our needs, but there is also fossil fuel generation that is sent out-of-state, and I think it is appropriate for them to be a part of that tax. Maybe this is a good way for us to fund this Commission. Maybe there is a mix where we can have some input from the ratepayers as well. From our organization's perspective, we have to do more than tax just the renewable energy industry. There are a lot of benefits to developing renewable energy, and I would not want to have our state put into a situation where the only industry that is taxed is renewable energy.

**Chair Kirkpatrick:**

There is no possible way we can tax geothermal. That has to be very clear.

**Kyle Davis:**

I understand the legal aspects. From a policy perspective, we would support taxing all.

**Chair Kirkpatrick:**

If the constituents are listening and they do not understand why we exclude geothermal, it is because they are protected in the Constitution based on their mineral and their net proceeds.

**Tom Clark:**

That is why I am not here on behalf of my geothermal clients. We have discussed the excise tax, and I have put forth a proposal that I think would not only be more fair and equitable, but could collect more money. My initial testimony this evening was that there are existing revenue streams. We are writing checks to the state for these projects, whether it is the use tax, the property tax, or other taxes. Recognizing the fact that these projects do not have a considerable impact on the counties in which they are located, versus the amount of tax they pay after the abatement, I think there is an opportunity for us to capture a segment of the property tax or use tax to fund this.

I have a real concern with the excise tax from a marketing perspective. A company could say they would not even look at Nevada because they tax renewable energy. It is a small amount to pay, but it could have an impact on

companies contemplating moving here. My clients are uncomfortable in supporting the excise tax.

**Chair Kirkpatrick:**

I will put on the record that I have met with many of you. I have worked with Legal. Any good business would reinvest in their company so that they could do better. I have checked with a few banks, and they tell me that because there is a volatile tax there might be up to a 1 percent "hit" based on the percentage rate you get, but because there could be a long-standing property tax abatement, you would get points for that too. If they gave you three points for having a long-standing property tax abatement, and you lost up to 1 percent for the tax, the company would still be ahead.

**Tom Clark:**

One of the other things that the banks look at is expansion. For the particular facility we did in Boulder, which was a 10 megawatt plant, the same bank will be the one that finances our 50 megawatt expansion, which will be followed by another 150 megawatt expansion. You do not get the abatements for the whole 300 megawatts to start with. You get 10, then 50, then the next project, and so forth.

**Chair Kirkpatrick:**

The concern on property taxes is when you lease the land. With green building, the state was made whole, but the development agreements cost the counties. I do not think it is fair.

**John Griffin:**

We do not have much to add to that dialogue, except my comments earlier as far as working on the tax structure for the entire industry. Our thought is the property tax abatement, the sales tax abatement, and the excise tax combined do not bring us into a competitive area with some other states. I do not know whether with the excise tax the intent was to make it similar to other states. Companies will do side-by-side comparisons.

**Assemblyman Christensen:**

I am anxious to see that comparison. How do we carve this out for the state so that we can be the magnet? It is not just, "build it and they will come." It is the entire ecosystem that we are trying to engineer in a way that will still be a good engineering idea 10 or 20 years from now. While you are working on that, I want you to know that is one of the pieces, for me, that makes sense. My start was in investment banking, and the numbers need to make sense, the math has to work first, and then you can figure out the messaging, the marketing, et cetera. We need to take a look at everything. My question is, do

you know what kind of timing you are looking at in order to give us that information? I would love to see the state-by-state comparison of the states we compete with. Where are those companies going to go?

**John Griffin:**

I can answer from Solar Millennium's side. We started working on those numbers three or four days ago. Hopefully, we will have something by the end of this week to give to you.

**Assemblyman Christensen:**

The sooner the better.

**Rose McKinney-James:**

The excise tax is a significant issue for everyone because it brings into play an additional cost to doing business. We have had detailed discussions, and I understand what you are trying to achieve, both with respect to funding the independent agency as well as establishing a benchmark to ensure quid pro quo. The way this is structured, only applying to renewables, creates some significant issues. It becomes a barrier to entry. It actually creates a demand-side incentive that favors fossil fuels. We cannot survive without fossil, but we are trying to focus on renewables. It creates a conundrum in terms of the best way to proceed. I think Mr. Davis' proposal could make for a better approach. If you look at section 28 you would have all of the distributive solar projects, including some residential and commercial, paying this excise tax. I am not sure that was the intent. We would seek some clarification on that point and hope we could find another mechanism. This is a challenge.

**Chair Kirkpatrick:**

All of you have done such a great job helping me with research. In five years, according to everyone's research, Nevada will be the major exporter of renewable energy. My thinking was that everything we send out of state should be taxed. I found out we cannot do that. The consumer does not see the benefit in that.

At the end of the day, if you can help me lower the consumers' utility bills and help me change their mind set, I would appreciate it. We have only seven days in which to do this. I am open-minded. I understand your job is to make money. My job is to make sure Nevada consumers get those lower power bills.

**Rose McKinney-James:**

I do not want to leave the record unclear with respect to benefits. I think it is really important that we not use a single metric of job creation. There is so

much more to it. Job creation is an important component. Perhaps as an industry we have not done the best job in providing you with the type of information that you need. We hope that some of the information you will receive early next week will help in that regard. That does not deal with the hole that you are addressing in terms of funding the Energy Commission. I do think it will give you a different perspective with respect to what a solid and mature renewable energy industry can bring to the state. A large scale project may give you one job, but that ignores the significant number of jobs that go into the construction and the fact that there are other jobs that are supportive in an ancillary way. We have an obligation to find a way to quantify that for you, and I hope we will be able to do so.

**Tom Clark:**

As an industry, we need to do a better job of telling the public what good we bring. This is Nevada. You cannot go up to someone on the street and say we are doing this for climate change. They will punch you in the mouth. I would like to get on the record that the transparency piece of this bill is important as well. If our companies receive these benefits, we better be able to come to this body or to the Tax Commission and say this is what we promised and this is what we delivered. You need to be able to tell your constituents they promised us so many jobs and that is what they brought.

**Chair Kirkpatrick:**

Is there anything else?

**Patrick T. Sanderson, Carson City, Nevada, representing Laborers International Union Local 872:**

I want to compliment you on this "one-stop shop." That is the way I look at it. You are putting it all in one basket which makes that Commission able to handle things a lot better. The most important incentive for these companies is that they can come in, put a plan in front of you, and build it, not in five years, but in six months or a year. No matter what we do, it has to be fair to the residents, the cities and counties, as well as the state. Why would a county want renewable energy if they do not get anything out of it? I think your plan encompasses all of this. I know you have been working hard on this. I have been working on this for the past two years. The one other thing I want to say is that when we get these jobs we want them to be good jobs. We hope that labor will have a voice in the process to ensure people will have health care, good wages, pension, and skills that they did not have before.

[Additional exhibits were distributed to become part of the record: a letter from Wayne J. Thorley ([Exhibit F](#)); proposed modifications from Chad Dickason ([Exhibit G](#)); and a letter from John C. Tull ([Exhibit H](#)).]

**Chair Kirkpatrick:**

Is there anyone else wishing to speak on any sections up to 99? I see none. Are there any concerns with sections 100 through 110? I see none. Is there any public comment?

I think we can meet again after the regular Commerce and Labor meeting on Monday to put everything into perspective and see where we are.

[The meeting was adjourned at 8:28 p.m.]

RESPECTFULLY SUBMITTED:

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Patricia Blackburn  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn Kirkpatrick, Chair

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

**EXHIBITS**

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

**Date:** April 1, 2009

**Time of Meeting:** 5:57 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 522	C	Kyle Davis	Proposed Amendments
A.B. 522	D	Dylan Shaver	Proposed Amendment
A.B. 522	E	Charles Benjamin	Per Capita Electricity Consumption Chart
A.B. 522	F	Wayne Thorley	Letter with statistical information
A.B. 522	G	Chad Dickason	Proposed modifications
A.B. 522	H	John C. Tull	Letter in support of tax