

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

**Seventy-Seventh Session
February 18, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:35 p.m. on Monday, February 18, 2013, 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 nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman Crescent Hardy
Assemblyman James W. Healey
Assemblyman William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblywoman Olivia Diaz (excused)



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Linda Conaboy, Committee Secretary
Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Stacey Crowley, Director, Office of Energy, Office of the Governor
Joe Johnson, representing the Toiyabe Chapter of the Sierra Club
Ray Bacon, representing Nevada Manufacturers Association
Jeff Fontaine, Executive Director, Nevada Association of Counties
Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Yolanda King, representing Clark County
Steve Hill, Director, Office of Economic Development, Office of the Governor
Justin L. McVay, Industry Specialist for Information Technology, Office of Economic Development, Office of the Governor
Steven Ringelberg, Chief Operating Officer, Vanguard Integrity Professionals
George A. Ross, representing the Las Vegas Metro Chamber of Commerce
George F. Holman, Senior Vice President, Server Technology
Tray Abney, representing Reno-Sparks Chamber of Commerce
Keith M. Lyons, Jr., representing Nevada Justice Association
Randy Robison, representing CenturyLink
Jack Mallory, representing the Southern Nevada Building and Construction Trades Council
Carole Vilardo, President, Nevada Taxpayers Association
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Keith Uriarte, representing American Federation of State, County, and Municipal Employees
Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO

Chairman Bobzien:

[The roll was taken, and a quorum was present.]

I would like to begin our hearing on Assembly Bill 33.

Assembly Bill 33: Revises provisions governing the partial abatement of certain taxes for certain energy-efficient buildings. (BDR 58-280)

Stacey Crowley, Director, Governor's Office of Energy:

I am here to introduce Assembly Bill 33. I will provide a short background on the Green Building Tax Abatement Program ([Exhibit C](#)). A copy of my presentation is available both here and on Nevada Electronic Legislative Information System (NELIS.)

The Green Building Tax Abatement Program has assisted many property owners and is designed to recognize a standard of high-quality, green, energy-efficient building. This was groundbreaking legislation when it was developed and it has transformed the design and construction industry in Nevada. Twenty-nine projects have received tax abatements and 64 projects are in the process now. Because of this legislation and these incentives, new industries were developed. Recycling, green building materials, and professions such as architects, engineers, and contractors have developed expertise in the areas of green design and construction much more quickly than without these incentives.

The current applicable systems are the 2009 version of the new construction, Leadership in Energy and Environmental Design (LEED), which is a rating system developed by the United States Green Building Council (USGBC) in the early 2000s; Core and Shell; and, Existing Buildings Operations and Maintenance (EBOM).

The program sets requirements for energy conservation, but it does not include homes. It sets a tax abatement structure that allows a 25 percent abatement for LEED silver, or higher; a 30 percent tax abatement for LEED gold; and a 35 percent tax abatement for LEED platinum. The categories have varying lengths depending on the amount of energy credits within this rating system. The length can be between five and ten years for new construction in Core and Shell.

During the 2011 Legislature, Assembly Bill No. 202 of the 76th Session revised the tax abatement structure for existing buildings. Prior to this bill, all eligible existing building types that earned LEED silver, or higher ratings, through the USGBC, were eligible for property tax abatements for up to ten years.

With the passage of A.B. No. 202 of the 76th Session only existing buildings, which were renovated for use by manufacturers that met other employment requirements, were eligible. The abatement was good for one year.

Recently released statistics reveal that in 2012, Nevada is tenth in the United States for states with the most square footage of LEED-certified space. An anomaly occurred in Washington, D.C., which outpaced all other states with more than a 3-to-1 advantage of square foot per person. We should be proud to be 10th in the United States in 2012. An overview of the projects that have received abatements has been broken out by county, by rating system, by project size, and by type.

In my exhibit, I included a report from the Department of Taxation describing the fiscal impact for all project types and the estimated impact on the 2013 tax structure, showing a full-tax impact of \$5,582,720. The fiscal impact for renovated buildings is estimated to be \$121,537.

Currently, there are 64 projects in the application process for the abatement. They are pending approval from the USGBC on their certifications. Fifty-eight of those projects are for existing buildings; 47 of those applications came in three days before A.B. No. 202 of the 76th Session took effect on October 1, 2011.

As you come to understand the intent of the previous bill, you will see it was developed for two reasons. The economic development environment in the state was focused on bringing in high-paying and long-term manufacturing to the state. The current structure of the tax abatement was too generous to existing buildings in that there was an across-the-board abatement structure for new and renovated buildings, not taking into account the varying degrees of renovation and investment in projects within the community.

The intent of A.B. 33 is based on the fact that national rating systems, such as the LEED system, have transformed the market. They have created good jobs and reduced overall energy expenditures for commercial and multi-family buildings. Moreover, the reduction of energy expenditures directly increased the non-energy spending of building owners and tenants. The renovation of an existing building continues to be a large part of the industry and encourages updating our inventory of inefficient buildings. In a time of little to no new construction, energy efficiency, retrofits, and upgrades allow building contractors and sub-contractors to utilize their skills to help make existing buildings more energy efficient, durable, and comfortable. The energy retrofit market not only allows contractors to build long-lasting skill sets, but also

allows businesses to reduce their energy costs and usage, thereby increasing their bottom lines.

The Office of Energy believes that even more than new construction, all existing buildings should be eligible for tax abatement. We also agree with legislators who made remarks last session that existing buildings should be subject to a lesser length and amount of abatement, depending on the value of the retrofit work being done.

Our proposed revision to *Nevada Revised Statutes* (NRS) Chapter 701A is to bring back tax abatement for this important sector of the industry, but utilize a tiered system or some other form or structure to take into account the value of the work being done.

Relevant changes to the bill include: In section 1, the bill proposes to remove reference to NRS 701A.115, which was language that was created in 2011; section 2, subsection 1 adds renovated buildings back into the structure of NRS 701A.110; section 2, subsection 4 creates criteria for renovated buildings to be able to look for property tax abatement and to remove the five-year stipulation; section 2, subsection 5, provides for the value of the renovation to be the subject of the tax abatement; section 4 repeals NRS 701A.115.

After working with the Department of Taxation and the Legal Division of the Legislative Counsel Bureau, we determined that more simplified language could clarify how the county assessor would base the abatement. It would be based on the value of the renovation instead of the value of the property at the time the abatement was granted. I submitted a proposed amendment ([Exhibit D](#)) that simplifies the language and does not change the intent of the bill. However, as we were working with the numbers and scenarios, a result was revealed that does not capture the intent of the bill.

For example, I used the template from the Department of Taxation to plug in five projects that have received tax abatement under the existing building structure. I calculated the abatement, both the way it is being calculated now under NRS 701A, and by the method proposed in A.B 33. The proposed method did not produce an annual abatement that is significant enough, in our minds, to justify the program, nor does it reflect the intent of the bill.

In one case, a project receiving an abatement of \$21,000 annually for ten years would only receive \$265 annually for five years under A.B 33. This was based on \$125,000 investment in a \$10 million building.

I would like to find a place in the middle, perhaps a shorter length of abatement or maybe a larger percentage of renovation costs. I ask for guidance in working with your Committee and the Department of Taxation to look at these actions.

Chairman Bobzien:

Thank you and thank you for your candor and your willingness to come forward to seek solutions. We are willing to work with you to get this properly developed and to get this right. It is important to get the process started.

Assemblywoman Kirkpatrick:

We removed this provision from the original bill because we thought, in our state, we should wait two years after these are in place before we implement them because of the unintended consequences. Last session I worked with Assemblyman Kirner to help some of the larger manufacturing companies come here. Our rates are competitive; however, they use a lot more energy, which becomes the issue. If they can mitigate some of it, more manufacturing might locate here.

On page 6, line 1, I need to be clear. Will you adopt regulations that will talk about an audit practice so that we make sure that they do not simply do the retrofits, get the abatement, and not come back? That has always been a concern.

Stacey Crowley:

We are happy to do that. The LEED rating system and the USGBC require a recertification every five years with the LEED system. That helps to make sure that people continue to comply.

Assemblywoman Kirkpatrick:

On page 4, line 11, there is a reference to a newly constructed building or other structure. I thought this was meant for existing buildings. If not, we need to revisit the point system before we put the percentages in.

Stacey Crowley:

The way this bill is written, it collapses what were NRS 701A.110 and NRS 701A.115 into one bucket, but distinguishes existing buildings and their tax abatement structure into section 2, subsection 4, paragraph (b). It distinguishes the different rating systems for existing buildings in what occurs in section 2, subsection 4, paragraph (b) and continues to subsection 5. I will make sure that is the case.

Assemblywoman Kirkpatrick:

Are we increasing the points for anybody to get 25 percent or 30 percent across the board?

Stacey Crowley:

Not in this bill. We have talked about attempting to raise the level of LEED rating points, which I believe we can do, the way I interpret the statute. The statute sets the minimum, but through regulations, we can go up from there depending on how the rating system has changed over the years.

Assemblywoman Kirkpatrick:

My concern is that two years ago, the state adopted "the 2011 International Building Codes," which require some of this. We should not have to give everybody as much tax abatement as the people who go above and beyond. We do not want to give away the farm, so to speak. We need to encourage this to move forward.

Assemblyman Daly:

On page 2, section 2, I wonder if there is any retroactivity? If someone did repairs two years ago and met all the requirements, but did not qualify for the abatement then, could they qualify now?

On your amendment, I read that the abatement will be calculated based on the amount of the renovation in relation to the total value of the building. Your other amendment says we will calculate the amount of the abatement based on the cost of the renovation without consideration of the cost of the building. My question is, why the change? Which way creates the most advantage?

Also, NRS 701A.115, which you are deleting, says employees must make at least 100 percent of the state average wage. For me to support that, it has to be back in the bill.

Stacey Crowley:

The first question, on the retroactivity, I will have to check on that in terms of our process. I do not think that is the intent. An applicant has to apply for the ability to get this abatement and they have 48 months to demonstrate that they have been certified. Typically, they are in the construction phase or about to embark on this phase. I will have to double-check that the language does not allow for retroactive activity. In the past it has not.

Regarding your second question, in terms of an advantage or a disadvantage with the language, we worked through several scenarios and looked at both the language as it sits in A.B. 33 and the language as amended. There did not

seem to be an advantage or a disadvantage. It was simply a clarification; however, we will revisit that. I want to make sure that I run more scenarios to make sure that there is no significant change between the amendment and the original language.

Assemblyman Daly:

Was the deletion of that revision to pay a minimum of 100 percent of the state's average wage an oversight?

Stacey Crowley:

That provision was not contemplated in the drafting of this language. It was an oversight. We can revisit that. As a side note, no manufacturing facilities applied for tax abatement in the past two years, based on this new legislation. We have not seen one go through with those requirements being met.

Chairman Bobzien:

We need a clarification on retroactivity from our committee counsel.

Matt Mundy, Committee Counsel:

There is no retroactive effect. It is passage and approval of a bill. No application can be considered until the bill is passed. Consequently, they would not have the option to receive an abatement until after the 48-month period.

Assemblyman Grady:

On page 3, lines 29 and 30, there is an explanation of how counties and cities are notified, and mentions this again on page 5, explaining how they will be notified. Lines 1 through 4 on page 7 says this "Will not impair adversely the ability of the State or local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged." If they have no input into it, is there a mechanism where they can voice their concerns?

Stacey Crowley:

There has been no process set up. We have not encountered this question before. We are happy to revisit the regulation.

Assemblyman Grady:

I hope there would never be questions, but in case there are, there should be a mechanism where they can notify you in writing that this would affect them.

Assemblyman Hansen:

I am confused on one point. Assemblywoman Kirkpatrick brought up the fact that we have adopted "the 2011 International Building Code," which requires this now. If it is required by code, why do we have to give them a tax break if it is something they have to do by code now?

Stacey Crowley:

There are several different types of codes. The state has just adopted a 2009 energy conservation code. Although it is not as stringent as the LEED system, which takes into account sustainability of materials, local materials sourcing, air quality, and water consumption, the other system takes into account many aspects about sustainable design and green building, not all of which are reflected in the building energy codes we have adopted.

Assemblyman Hansen:

This basically is an enhancement to encourage people to build above and beyond what the code requirements are.

Stacey Crowley:

Right. As Assemblywoman Kirkpatrick mentioned, they are coming closer in alignment. It is something we should review to make sure that we are making people step it up a notch or two.

Assemblyman Hansen:

It makes sense. If everyone has to do it by code, why do we need to give him or her an incentive?

Assemblywoman Kirkpatrick:

We made some big strides on what was required. It is getting easier to get the LEED rating. I think as building codes get better, so should LEED get better. There are specific things that are allowable within the LEED designation, and we know how they collect points. Some of the new building codes allow for some of these, so it is not so hard to get the designation. We want the best so we are willing to give some abatement for it.

I want to clarify, the 64 applications that are in process would not be subject to this retroactively, and they would not qualify because they already have had their application in process for 48 months. Is that right? Hypothetically, if this passed tomorrow, regulations would have to be adopted and a new process would need to be started.

Stacey Crowley:

Right. We would have to determine whether those that are in process would be eligible or not under the old jurisdiction.

Assemblywoman Kirkpatrick:

I think this is key because the 64 applications currently in the hopper should go under the old regulations, but the new ones should fall under new regulations. They should not be able to drop their applications to start a new one. We need to work on that. It needs to be clear.

Chairman Bobzien:

This is another thing we need to work out—what the status is of those in the hopper and how will we address them.

Assemblyman Ellison:

The 2012 codes are massive. I do not know how the state can comply with all of the codes. My biggest concern is that we will not open the door for abatement to take away from schools and counties that are struggling.

Stacey Crowley:

Yes, some jurisdictions and state public works departments have adopted, and are using, the 2012 International Energy Conservation Code. They are starting to come into closer alignment and we must make sure to give incentives to those who go above and beyond. With the codes as they are adopted now, both our office and jurisdictions that have adopted a later code are trying to assist all jurisdictions to get up to speed on those codes and try to make the transition from 2009 to 2012 as seamless as possible.

Assemblyman Ellison:

It seems as if the older buildings, those that are struggling trying to conform to code, should be where the focus is. I know there is a lot of renovation going on and some of those buildings are struggling to meet the codes. Focusing on these buildings would help the economy in the long run.

Assemblyman Livermore:

As we implement this process, when can local counties who can no longer afford the requested incentives opt out? I am looking at the fiscal impact on Carson City. If only 5 percent of the buildings here were to take this current ownership of commercial and industrial properties, we are talking about a future biennium of \$225,000 at 5 percent. What if it is 25 percent or 40 percent, when does that incentive impact the county operation?

Stacey Crowley:

I do not have the answer for that. We do not have a cap per county established. Based on the 29 projects that have been through this system, I think 5 percent is probably ambitious, although it is something that we would like to strive to see. However, maybe we should strive to set a cap or some other mechanism.

Chairman Bobzien:

Thank you for your candor. We need more time on the mechanics of this and how the calculations will work. Let us talk soon. Let us move to proponents of A.B. 33.

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

We support this bill and we supported the original legislation as well as the amendments. We would like to put on record that we recognize the effort that went into crafting a bill that does what this does. We look forward to seeing the revisions.

Chairman Bobzien:

Is there anyone in opposition to the bill?

Ray Bacon, representing Nevada Manufacturers Association:

There are two or three things that I think are important. First, when this bill came out with the abatements, we did not step forward to support it because it was going to be complex. I had some conversation with the national LEED people who assured me it was unlikely that a manufacturer, unless they could also deal with the energy side of the equation, would be able to qualify because they would not be able to lower their emissions or their power consumption. At this stage, we had a void in our power situation between about 2.5 megawatts, which is as large as you can get for a small, commercial business or a residential operation, to about 15 megawatts, where there is no program into which a company fits, whether it is waste heat or water recycling, to reduce their energy consumption. You cannot get distributive power and you cannot do those things. That is one that keeps us out.

The other side of that coin is that the only thing it takes out is the manufacturing operation. If you fix the other policy, then there would be an opportunity for manufacturers to come to the party. Energy conservation is the future and is what has to take place. This is where the biggest savings are coming. I have mixed feelings about this, but if you are not going to fix the other side of the coin, we cannot make this work, from a manufacturing standpoint.

Chairman Bobzien:

You are not opposed to the bill itself? I understand the larger context and I think that is a relevant part of the conversation, but I am trying to keep our record clear. There is nothing specific you are objecting to in the bill, but the larger state policy?

Ray Bacon:

The larger state policy is exactly what we are objecting to.

Jeff Fontaine, Executive Director, Nevada Association of Counties:

We are opposed to A.B. 33. Our concern is it seems this is a further erosion of tax revenues to counties. To Assemblyman Grady's point, about the ability for counties and cities to have a say in whether or not these tax abatements should be granted, in section 3 at the top of page 7, there is a finding about whether or not it will adversely impair the ability of the state or local government to pay interest and principal on outstanding bonds. This is a finding that is already in this bill. The local governments would not have a say. What we would like to see is, if tax abatements are going to be authorized for these types of projects, for the counties to have a say in how those county tax revenues are abated.

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities:

Our opposition to this bill is more general in nature. I agree with Mr. Fontaine. The lack of local government involvement in the process of tax abatement is of concern to us. Also, this bill seems to expand the abilities of those eligible for these abatements. We are in support of green energy and renovating some of the older buildings to bring them to a higher standard. We want to make sure that local governments have a voice in the process regarding the granting of abatements and the terms of those abatements.

Yolanda King, representing Clark County:

I echo the comments made by the Nevada Association of Counties and the League of Cities. This would have a negative impact on Clark County, with Clark County absorbing 95 percent of the fiscal impact. What this leads to is negative revenue or a reduction method that would come to Clark County in terms of property tax revenues, which make up about one-third of what is collected in Clark County for the general fund revenues.

Chairman Bobzien:

Are there questions for the panelists? [There were none.] We will move to those in the neutral position. [There were none.] We will close the hearing on A.B. 33 and open the hearing on Assembly Bill 63.

**Assembly Bill 63: Revises provisions governing compensation for overtime.
(BDR 53-294)**

Steve Hill, Director, Office of Economic Development, Office of the Governor:

Assembly Bill 63 is a straightforward bill that provides for an exemption to the overtime statute in Nevada for computer and information technology (IT) employees. The primary motivation for this bill is that we think this has been, at times, an impediment to job growth in Nevada in an area that provides opportunity for the State.

Justin L. McVay, Industry Specialist for Information Technology, Office of Economic Development, Office of the Governor:

Currently, Nevada does not exempt from overtime computer and IT professionals ([Exhibit E](#)). All states surrounding Nevada provide an overtime exemption for this type of employee. We feel that this is a competitive disadvantage for Nevada, especially when compared with other states in the West. *Nevada Revised Statutes* (NRS) 608.018(3) currently exempts 14 specific classifications of employees, but none of them includes computer or IT professionals.

On page 4, there is a brief overview of those states and neighboring western states that recognize computer and IT employees as exempt from overtime. While some of the states defer to federal labor laws, which do recognize computer and IT employees as exempt, others have specific statutes that reflect the federal law that exempts these employees. We are proposing that NRS 606.018(3) be amended to include an exemption for computer and IT employees. Slide 5 reflects the proposed language, which cites the federal law. We would add the letter "O" to subsection 3, which says, "to the extent authorized by 29 U.S.C. § 213, employees in computer and information technology, including, without limitation, computer systems analysts, computer programmers, software engineers, and other similarly skilled employees."

The details of the federal law are reflected on page 6 of the exhibit. This regards computer and IT employees, including the qualifications that federal law requires for this exemption. This proposed amendment is important for the creation of great jobs in an industry that we have targeted for growth. This will allow the state to be more competitive in this industry.

Assemblywoman Carlton:

I understand what you are trying to do; however, I am confused because this applies to hourly employees. The way that the industry can address this without having to change state law is simply to make them salaried employees and then there is no overtime issue. Why would we need to change this?

Steve Hill:

My understanding is that it is not as clear-cut as it seems. The statute in Nevada has specific areas in which someone is exempt for overtime or can be made a salaried employee. In order for the employee to be put into the salaried classification, they have to meet one of those qualifications in the Nevada statute. We are asking that this be added to that list of qualifications so that an employee "may" be made salaried and be exempt from overtime.

Assemblywoman Carlton:

If an employee is making \$27.63, this will apply to them. They will be considered hourly. If they make \$27.64, that would make them a salaried employee, so there is just one-penny difference between the two. When you go into section *United States Code*, Title 29, Section 213, and go through all of the criteria, you have the valid amount listed.

To me it would seem that the employer, who wanted to deal with the overtime issue, would pay an employee \$27.64 and then this no longer applies to him or her. Then an employer does not have to worry about paying overtime.

Steve Hill:

Assemblywoman Carlton, I believe the way the Nevada Statutes are written, no matter what the pay, there cannot be a salary without overtime compensation. The way the statutes are now written, they do not qualify for that exempt status within the current 14 professions or descriptions of employment that are in our statutes. What we are asking is for Nevada to add this to the list of qualifications that would exempt an employee from overtime so that situation could exist.

Assemblywoman Carlton:

I am reading the exhibit and there must be something I am missing. When you cite the code and the hourly wage, I do not understand what the problem is and what we are trying to get to here.

Assemblywoman Kirkpatrick:

I understand that we are always behind when it comes to IT people in our state. How many IT employees is this affecting? Would they not get overtime if they were currently getting it? I am not understanding how this is keeping us from being competitive. We can set the wages for whatever we want. Honestly, our state employees do not make half of what other state employees do. We have furloughs, 2 percent cuts, and other things. It looks like a simple bill, but there seems to be something more to it. I think we are not competitive, but that is my personal view. How is this going to make a difference, and how many of

our IT folks will be affected today if this bill is passed? It is not specified for a new employee; it is specified for all employees.

Steve Hill:

Our focus in this proposal is on private sector employment. I have not looked at the state employment side of this. What we have heard from the industry is that companies that have the option of employing computer and IT employees, both here or somewhere else, recognize that because all of the states that surround us provide this exemption now, and Nevada does not, it keeps those companies located here from hiring employees here, or companies located elsewhere from moving here. This is because of this provision.

The statute in Nevada supersedes the federal statute. In this area, we are asking that Nevada change its law as it affects these employees and go back to the Fair Labor Standards Act definition for this group of employees.

Assemblywoman Kirkpatrick:

This would affect some of our state employees as well as the private sector. It would give them an incentive to pay higher wages. This would affect all employees in the private and public sector. For the public sector, I have concern because how much can we do? It has to be addressed because they count too.

Steve Hill:

It would affect all categories, but it would only affect those employees that make \$27.63 an hour, or around \$55,000 annually, or more. Anyone being paid below that would not be affected by this provision.

Assemblyman Daly:

When you looked at California, you got to \$57,470 if you were paying on a salaried basis and were not exempting public employees. If you are going to do something like this, could we set a limit that pays people doing this work \$65,000 or more a year?

Maybe we will get them a raise and they will make more than that. Our law is in excess of federal law. We have overtime for the people in these positions. I have a hard time taking away someone's overtime. I understand the salaried positions and you still have to pay overtime unless you are otherwise exempt, for instance, if you are an executive or a bona fide administrator. Can we set a minimum salary, whatever is competitive with the other states? I do not know what the impact is or how many jobs you claim we are losing, but if we are only paying \$57,000 and California is paying \$81,000, I do not think the quality people are coming here anyway.

Steve Hill:

It is possible to look at a different threshold than the federal position on this. The cost of living in California makes that difference somewhat explainable. Many of the states around us have the federal threshold as theirs, so we would need to look at the competitive aspects of that.

Chairman Bobzien:

I am attempting to determine what the relationship would be between this statute and the *United States Code*. If you look at the *United States Code*, there is a difference in the enumerated types, but the key thing it says is that "employees in computer and information technology including, without limitation..." and it lists some of these types. In my mind, my question is, are we trying to shift the definition subtly? Is this important to Nevada's strategy in the articulation of who it is we are talking about? It is not clear how the two interact.

Steve Hill:

I understand. That is not our intent. Our intent is to provide the correct language that would allow the federal definition to be the definition that Nevada uses.

Chairman Bobzien:

Maybe this is a drafting question. Why then would we have "including, without limitation," leaving the door open for other possible types?

Matt Mundy:

Generally speaking, the federal law is drafted more broadly in application so the states are authorized to mirror that. We do not have to recognize every exempt category from the minimum wage laws. In doing this, we were trying to capture the intent of the request, but I think it is possible you could read employees and computer information technology maybe a bit more broadly than what the federal law is. But it includes those particular categories of employees that are identified expressly in the federal law. To the extent that it applies to those, I think it is accurate, but again, if it were to mean, when we say "including, without limitation," anything else, there would probably have to be some applicability in another category other than what 29 U.S.C.213 suggests; someone involved in computer technology who might be an executive or something to that effect. I think that with regard to the specificity of computer systems analysts, computer programmers, and software engineers, this is exactly what the federal law contemplates.

Chairman Bobzien:

Additional questions for the panel? [There were none.] We will now move to the support category.

Steven Ringelberg, Chief Operating Officer, Vanguard Integrity Professionals:

My company is based in Las Vegas, where I have 60 technical people who work for me in the United States. They provide services and do software coding. They develop software and they are software engineers. Only two of them are employed in Nevada. With those two, we do something we do not do for the rest of the employees. In order to qualify them for an exemption from overtime under Nevada law, we make them managers. They are not very good managers, but we make them managers; therefore, they are exempt from overtime. All of my technical people make more than \$100,000 annually. Under Nevada law, just by paying the employees a salary if they are not in an exempt category, you still have to pay them overtime once they work more than 40 hours a week.

Calling them salaried or calling them hourly does not determine the overtime question. I have developers and professional services people who work in California, Oregon, Washington, Colorado, New Mexico, New Jersey, Wisconsin, and Florida. But I do not bring them here because it would drive my payroll up. When we looked at bringing these developers and technical people to the state, it increased our payroll by more than 24 percent.

All of these people believe they are professionals. We have tried to relocate them to Nevada by lowering their salaries and by telling them we will pay them overtime. They refuse. They do not think of themselves as hourly employees who need to be paid overtime. In every other state in which we operate and work, they are not eligible for overtime and they are very well paid. I do not know about all of you as I watch you work on your computers, but computers are seductive. They suck up a lot of time. We try to get our employees out of the office, but they are geeks. None of them works less than 50 hours weekly. It is hard to drag them away. Some of them relate to their computers better than they relate to humans.

All of us have a little bit of a problem getting ourselves away from our computers, but we would not have the ability to enforce a 40-hour workweek on these folks, which is why we cannot afford to let them come to work here. We relocated to Nevada in 2002 from Orange County. We have everybody but the technical people here. We run sales, administration, customer support, and finance out of Las Vegas. But all of our research and development, coding, and our technical people are kept out of Nevada, with the exception of two.

We strongly support this bill. It will let us bring the rest of the company to Nevada. This is probably one of the most ignored labor laws in the state. Most of these professional people make more than \$80,000 to \$90,000 annually. They do not think they need overtime. They do not make an issue out of it. Most of them work a lot.

The federal statute is limited and does not cover everybody who works at a computer. If you are a computer repair person and if you are peripherally involved and do your job on a computer, that does not count. It has to be an engineer or an architect or someone devising new code—something like that. Simply because you work in computers or are related to them, that is not applicable. We support this bill.

George A. Ross, representing Las Vegas Metro Chamber of Commerce:

The Las Vegas Metro Chamber of Commerce strongly supports A.B. 63. There is nothing I can say that would add to the endorsement of the bill.

George F. Holman, Senior Vice President, Server Technology:

My company is the second largest supplier of power distribution units in the world. We employ 180 people. Our three software engineers work in St. Louis. They are all paid more than \$100,000 annually. This is something we strongly support. We have offices in different parts of the world, primarily for sales, but there is no reason for our technical staff to be working in Missouri when they could be working in Nevada.

Our company moved to Nevada in 2000 from Mountain View, California. We moved here with 28 employees and \$12 million in sales. We are well over \$65 million in sales with 180 employees. Nevada is a great place for business. The tax climate and the working environment here have been fantastic for us, but this is our "hole in the boat." There is simply no reason for us to maintain an office in St. Louis, but we do by virtue of the requirements of the current law.

Tray Abney, representing Reno-Sparks-Chamber of Commerce:

The Chamber supports this bill. It is time to bring up the larger issue of all of the other industries in the state affected by this daily overtime requirement. It seems as if in every session we have a different industry coming forward asking for an exemption from this bill. I have heard from home health care people, the hospitality industry, and transportation and logistics representatives, all who find this issue troubling and this piece of the law difficult. I have found two other states besides Nevada that have the same daily overtime law.

Last year, in "The Impact of State Employment Policies on Job Growth," a study by the U. S. Chamber of Commerce, a three-tiered rating system ranked the states by good, fair, and poor ratings. Nevada was in the poor category. The first factor they listed in the report, and contributing to the state's poor ranking, was overtime requirements beyond federal law.

I think we should look again. We support this bill and we know this affects not just this industry, but many others in the state as well.

Assemblyman Healey:

What I am hearing sounds as if the practice of not paying these job classifications overtime is industry standard. Is that correct?

Steven Ringelberg:

I have never heard of it in the United States. When I first became aware of this issue two years ago, I pulled all of the statutes from what I call the 52 states, because I count the District of Columbia and Puerto Rico. Either they ignore it—there are many states that do not have their own overtime codes, which means it is the federal law by default—or they incorporate what is attempted in this statute, or what the California version is. They do this in 46 states.

Assemblyman Healey:

The daily overtime issue is something we need to look at further. Within the industries I represent outside the Legislature, it is always difficult to identify which positions qualify. There is a laundry list besides pay as to what that individual classification must do in order to be classified as a salaried position and to be exempt from overtime.

For those of you who own businesses here, both large and small, would this exemption bring the ability for you to expand in Nevada?

George Holman:

We could close our office in St. Louis. We also have a software engineer in Oregon. Yes, we could expand where we are now without having to maintain offices in other states for that purpose.

Assemblywoman Kirkpatrick:

Every simple bill brings many questions. I am trying to clarify this issue. Is it correct to say that employees over \$27.63 an hour would not be classified as overtime employees? You said 52 other states do not pay this as a whole. I know this is a large industry that we are trying to move forward within our state. But what we do not want is to not pay people dollars so they can live. Where does the line stop when everything is factored in? I understand

that technology is addicting and keeps people there for a long time, but where is the line drawn?

Steven Ringelberg:

We employ people in Las Vegas who are qualified for overtime. We manage their jobs so either they work 40 hours per week or we make a deliberate decision that after they work 40 hours, we pay them overtime. We do not have any employees who would be covered by this exemption who make less than \$57,000 annually. We do not employ anyone who would be covered by this who makes less than \$88,000 annually.

If they are below \$57,000 annually, you have to pay them time and a half for every hour after 40 hours worked in a week. You have to do that whether you ask them to do it or not. If people decide to stay an extra five hours and work 45 hours, you have to pay them. If you manage them to 40 hours, you do not have to pay them overtime as long as you pay them what they agreed to work. For the people who make a lot of money, if this passed and they work in Nevada, we would not pay them overtime even if they worked 70 hours in a week, which happens sometimes.

Assemblywoman Kirkpatrick:

Does that rate inflate over time? What may be \$27 today might be \$30 in the future. Information technology is what we want now and what everybody trains for. But does that number ever change?

George Ross:

That number would change with the market. It is a function of the market. You must pay a certain level to get the people you want, and as long as you want quality people, you have to pay them enough to come to work for you.

Assemblywoman Kirkpatrick:

Is that the bottom line? There is no federal increase on what that number would be? It appears we are using broader language in this bill than the federal statute. Is there a cost-of-living increase that goes with that number? My concern is we are saying we want to pay people higher wages and then we give abatements and exemptions to bring them here. It seems there needs to be a balance. So that at the end of the day, they are contributing to the community and not taking from it.

George Ross:

These are good jobs. These are the kinds of people who buy houses, who buy cars, and become involved in the community. They make good

money. The bottom line is, if we did not keep up with the market, we would lose these people. You must stay up with the market. A part of that is by conducting price surveys to keep your eye on what is going on elsewhere among your competitors. Consequently, that question takes care of itself.

Steven Ringelberg:

Three sections of the federal Fair Labor Standards Act have an indexed amount, which is \$455 a week. There are, among others, the administrative, executive, and computer professional categories. To answer Assemblywoman Kirkpatrick's question, the federal government routinely adjusts that.

Chairman Bobzien:

That is what we were wondering. It is in the code. You are saying it is routinely adjusted.

Steven Ringelberg:

Yes.

Assemblyman Healey:

For the positions this may be affecting, it would be helpful if you would assemble a chart and spreadsheet showing the different positions and the average salaries, so the concerns about whether or not this will affect someone making a much lower wage, such as \$12 an hour, will be alleviated.

Chairman Bobzien:

We will now hear from those in support of the bill.

Carole Vilardo, President, Nevada Taxpayers Association:

We support this exemption. Nevada's overtime law is different from the federal overtime law. It is a rolling 24-hour average. Tray Abney mentioned there is a larger picture, and he is correct.

In December 2010, after surveying our membership, we asked them, if they had their way and could do one thing that would assist them in hiring employees, what would it be?

We came up with seven recommendations. One of them was to follow the federal law. We are one of very few states that do not follow federal overtime law. This rolling 24-hour average affects our smaller members.

For example, consider someone who owns a small convenience store, with limited employees and three shifts to cover the hours the store is open. For the graveyard shift, which is the slowest shift, there is one employee. An employee

calls in sick, and the employee working the night shift is asked to stay on with the promise of a full day off. The problem is, under Nevada law, because he or she is coming up on his next shift that is eight hours of overtime; however, it is not overtime at the end of 40 hours.

We had an overwhelming response. That is difficult for some of our seasonal businesses and their employees. We are not, in that category, offering professional and high-paying jobs. In many cases, you have employees who would not otherwise be qualified for other positions by nature of schooling, intelligence, or those with disabilities. But, we do provide employment, and then we are restricted. Local government and state employees do not operate under the same laws that the private sector does. For state employees, their eight hours of overtime is within a 16-hour shift, not a 24-hour shift. If there is appetite to process this bill, I hope you will look at the larger picture, because it has an impact on our members, especially the smaller ones. In certain professions, you do need to be able to call back employees, even though you may not want to.

I urge you to consider this in the global picture and know that at least your state employees do not have the same conditions that we do. Also, we are one of the few states that does not follow federal overtime law, and, in addition, the way our minimum wage is, and the way it continues to escalate, it is a number that continues to grow, up to one-and-a-half times.

Chairman Bobzien:

I appreciate the broader picture and I think it is always important to bring that forward. In reference to this bill, I hope people are not more confused about the rolling 24-hour average, because that is applying to a minimum wage-and-a-half threshold. Questions?

Assemblywoman Carlton:

I think the provision you are addressing is based on an 80-hour workweek that we have often used for police and fire. Is that the provision you are talking about? I know the folks you are talking about do not guarantee people 40 hours a week, so I do not think there is an issue on the other side of it. I want to understand which provision you are talking about.

Carole Vilardo:

I am talking about the 40 hours. The people I am talking about have full-time employees. They are not part-time. I understand what you are referencing.

Assemblywoman Carlton:

There is a provision that is based on the 80-hour, two-week, variable-shift situation that we do for state employees so they are not impacted.

Carole Vilardo:

That was not what the issue is. I appreciate the clarification.

Assemblywoman Carlton:

Would you get back to me and give me the citation as to what you are addressing, because I am not familiar with it.

Carole Vilardo:

Yes.

Randy Robison, representing CenturyLink:

We are in support of A.B. 63. You have some good testimony from industry professionals as well as from Mr. Hill. We echo some of those comments and reiterate our support for the bill.

Chairman Bobzien:

Would this be useful, for instance, if there were a two-day service outage, you would be able to bring more people in and deal with it?

Randy Robison:

Yes, that is one of the scenarios I have been thinking of. That would help us. It is the culture of these types of professionals; sometimes it is tough to pull them away, particularly when we are rolling out a new product or working on new services. Yes, I had those scenarios in mind as well.

Chairman Bobzien:

Moving to the opposition.

Keith M. Lyons, Jr., representing Nevada Justice Association:

We are speaking in opposition of this bill. One of the principles of federalism is that the states can do more than the federal government. The federal government, in many cases, sets out the minimum standards.

The Fair Labor Standards Act is exactly that type of statute. It sets out the minimum standards for what you must provide to your employees; states are allowed to provide more. In this case, one of things I have not seen factored in is for Nevada employees. How many employees will start losing money who are now being paid overtime for their jobs? This is a type of industry where, as was said earlier, employees can work many hours and if they are paid overtime,

companies will manage their time so they only work 40 hours per week, or perhaps 50 when they factor in what extra money they are willing to pay them.

Once they become exempt employees, under Nevada law, they no longer have to pay them overtime. These are employees who will be away from their families without any concern about the number of hours they are working. We want all employees in the state to have a balanced life. Our main concern with this bill is that it now takes employees who are being paid overtime out of that category. We believe employees in this category should be paid overtime for the work they are providing.

Jack Mallory, representing the Southern Nevada Building and Construction Trades Council:

Regarding the merit, or the lack thereof of this bill, I understand what it is the proponents are proposing. They think that there is an economic benefit in moving their corporate offices to Nevada for its favorable tax climate; however, they are not interested in moving some of their higher paid employees here because of the potential of having to pay them overtime. I question whether passing this provision would create an incentive to bring those workers here, particularly those who could be doing this work sitting at their dining room tables.

I question if putting this exemption in Nevada statutes would create an environment where there would be emphasis placed on creating new jobs, not simply moving existing jobs to the state. If you have a scheme where you can work people an unlimited number of hours and not have an overtime requirement, what incentive is there to bring new blood into the field? You have highly skilled and trained people who are willing to work an unlimited number of hours. What is the incentive to create new jobs and to train new people? I always viewed overtime to add to the work force when needed. Using the example that Ms. Vilardo used, I would like to expand upon that. The convenience clerk who is making \$8.25 per hour, who is a single mother with three children at home, who has to call and find a babysitter to watch her three children while she works that extra shift, does not even receive enough money to pay that babysitter. In this case, that would be the equivalent close to \$4.13 per hour. The impact of changing the eight-hour-day provision as it pertains to low-wage workers is something we will always defend. Ultimately, we are opposed to this provision and do not believe that creating additional exemptions for workers as it relates to overtime is something this state should undertake.

Keith Uriarte, representing American Federation of State, County, and Municipal Employees:

On the surface, this legislation is poorly written. It opens the door for complaints and suits by both employees and employers. As we heard, there is a separate Fair Labor Standards Act for government workers. If this bill were enacted, it would strip away the rights of government and school employees as well. You heard testimony and usually you hear that Nevada needs to do certain things for job growth. As I was sitting in the audience and listening to the best testimony put forward by those who are initiating this legislation, I heard a gross increase in jobs of six people. The first bit of testimony, which had to do with changing titles of people to avoid overtime, involved two employees who are working in California who would come into Nevada if this provision were changed. The second person we heard has offices in Nevada, St. Louis, and Oregon, as well as employees here, totaling six people. There has to be something else engaged in this process, and as we heard from Las Vegas, there are some fundamental issues that are in force.

California is indexed. Contrary to what you heard from those supporting this, there is no automatic index for the minimum wages for those who are excluded from the Fair Labor Standards Act. There is in California; there is not under the Fair Labor Standards Act.

We attempted to determine the number of state workers who would be impacted by this. That number is difficult to determine and because of that, we are against this legislation.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

We represent more than 200,000 workers within the state. We represent communication workers, who would be identified by this change in the law. We represent workers in the medical field, who would also be potentially impacted. If not, this is an assortment of problems. This is not written clearly.

Our concern is that workers' positions will be changed to avoid paying overtime. The problem with Nevada is not the fact that overtime is paid, it is the fact that we have the lowest graduation rate in the United States, and that we do not pay enough to attract people. In the state, you cannot keep Occupational Safety and Health Administration inspectors because once they become an inspector, their salary is doubled somewhere else, either out of state or in private industry.

These six positions that are being discussed today are not going to be the kind of economic development that we think is right for Nevada. For that reason, we

are opposed to this bill. We think that this exemption will lead to other exemptions.

Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada:

We do not believe that this change in the law will bring more of these technicians or data experts to the state. Given the base wages outlined in this provision of the statute, it costs an additional \$11,820 annually to pay these people overtime if they worked 1,000 hours of overtime a year. If it is more economical to open an office in another state, where they do not have to pay that \$11,820, which is 60 hours a week, how can their math work to bring them to the state? Maintaining another office and still paying the same straight-time wages in another state does not pencil out to be an economic gain to have a person working in another state, especially when you could have him or her working here, in an already-maintained office. The provisions of this bill are aimed at Nevada's overtime laws and it is an attempt to erode them. Nevada may have more stringent overtime laws than other states, but classifying someone as a professional on \$23.63 per hour, which equates to \$47,000 annually if he or she is working full time, and then exempt that employee from overtime, is not a way to move the state forward. It is a way to drive our working people down, while the people who are making the money continue to get richer. When Assemblyman Daly asked if an annual limit was put on this, similar to what California has, everybody who testified talked about people making in excess of \$100,000 annually. None agreed with the Assemblyman saying we are all making over \$100,000 annually so that limit is not something we could not live with. If they were paying people this well out of state, it would seem they would volunteer to put a limit of \$100,000 a year on it. In addition, if you make more than \$100,000 a year, then you qualify under this exemption. If you are not making that much money, then you are losing money and will be at a net loss if not paid overtime.

We are opposed to any tax on overtime, and this one, on its face, looks like it might help economic development; however, we continue to give away in the name of economic development, and we are not gaining. We are not getting a net win out of it because we are giving back tax dollars and giving up wages. We are giving things up to get people to come to this state. They are not reinvesting with the jobs they are promising. The level of pay is not as high as they are promising and we are not getting the economic growth because they are coming here and do not have to pay taxes. We give them tax breaks on property taxes, and now we are looking at them not wanting to pay their employees. We are opposed to this legislation.

Assemblyman Healey:

Much of this conversation had to do with competitiveness. We heard that we are one of few, if not the only state, that has this provision for these classifications of jobs. Why should Nevada continue to be one of few, if not the only state, that does not allow for this exemption? In my opinion, this would hamper the ability to be competitive. It is obvious we are not competitive when other states that have this exemption are.

Keith Uriarte:

As Mr. Thompson has stated, the issue about competitiveness has to do with education. This has little to do with creating jobs. You heard about six jobs today. The real problem is for those who want to come to Nevada, bring their families, and put them into an education system that is not an excellent system. That is where the issue is and where we need to make improvements. We need to get away from reducing people's wages. We need to build on what Nevada should be offering, not making false claims of job development.

Assemblyman Healey:

There is no question that education needs to be addressed, but that is for another conversation. However, when looking at this specifically, I do not see that this is what we are addressing here. I disagree with you, respectfully, but the example of six jobs is too literal an interpretation. We could fill this room with company owners who could give us many more examples. I think that is a dead point. It is not accurate. In Nevada, when we are not competitive in this market and one of very few states that has this overtime provision, it makes sense for us to then be competitive with the rest of the country.

Danny Thompson:

I can fill this room with people who will be affected by this proposed change in the law and who would disagree with Assemblyman Healey. I represent many different kinds of people who would be impacted by this. They would come here and they would say, please do not change my overtime status. Potentially, that is what this bill will do. We do not do things here just because other states do.

Assemblyman Hansen:

What is the dollar volume for overtime?

Keith Uriarte:

We do not have that number. It would take an information request to determine who would be impacted by this.

Assemblyman Hansen:

Does anyone know how much we pay now in overtime?

Keith Uriarte:

We do not have a number yet as to how much we pay in overtime. Some departments have vast amounts of overtime, but we do not have those amounts. However, we can get that for you.

Assemblyman Hansen:

If we are paying substantial amounts, we could reduce that and expand the labor pool and pick up some jobs.

Chairman Bobzien:

Someone should be able to look at job classifications and give us an idea of how many state employees are in question here.

Keith Uriarte:

That information is critical. It is difficult to come up with numbers, but it is opening the door to potential problems when it comes to identifying those people who would be exempt from this.

Chairman Bobzien:

Are there additional questions? [There were none.] Is there opposition to A.B. 63? [There was none.] Is anyone neutral? [There was no one.] The hearing on A.B.63 is closed. Is there any public comment? [There was none.] The meeting is adjourned [at 3:23 p.m.].

RESPECTFULLY SUBMITTED:

Linda Conaboy
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 18, 2013

Time of Meeting: 1:35 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 33	C	Stacey Crowley	Supporting Document
A.B. 33	D	Stacey Crowley	Proposed Amendment
A.B. 63	E	Steven Hill	Supporting Document