

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Seventh Session
June 3, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:24 p.m. on Monday, June 3, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joseph P. Hardy
Senator James A. Settlemeyer
Senator Mark Hutchison

COMMITTEE MEMBERS ABSENT:

Senator Joyce Woodhouse (Excused)

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Caitlin Brady, Committee Secretary

OTHERS PRESENT:

Jeff Fontaine, Nevada Association of Counties
Jack Mallory, Southern Nevada Building and Construction Trades Council
Lisa Foster, City of Boulder City
Stacey Crowley, Director, Office of Energy, Office of the Governor
Samuel McMullen, Las Vegas Metro Chamber of Commerce
Thorán Towler, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry

Chair Atkinson:

I will open the hearing on Assembly Bill (A.B.) 239.

ASSEMBLY BILL 239 (1st Reprint): Makes various changes relating to energy.
(BDR 58-224)

Senator James A. Settelmeyer (Senate District No. 17):

I am presenting for Assemblywoman Marilyn Kirkpatrick, who could not be here tonight. I have worked extensively on A.B. 239. The bill authorizes the director of the Office of Energy, Office of the Governor, to charge and collect certain fees from applicants for certain energy-related tax incentives. It revises provisions of *Nevada Revised Statutes* (NRS) relating to eligibility for and approval of applicants; permissible uses of money in the Renewable Energy Fund; land use planning and granting by local governments of permits for construction of certain utility projects; and establishes the Economic Development Electric Rate Rider Program. It requires the Public Utilities Commission of Nevada, in consultation with the Office of Economic Development, to administer the Program, and provides for other properly related matters.

I have been vocal about issues pertaining to renewable energy. I understand the problems distributive generation can create, especially relating to geothermal energy. It has always been a parity issue. I agree with the desire to reach parity with other renewable energies, but we have not had a good mechanism to do that. This bill came at it a different way—putting it all within the hands of the counties. The counties will determine whether the abatements would be too costly for the county to grant. This gives the counties the ability to deny an abatement because it is too costly. I appreciate the parity. It also redirects some of the funds that have gone to the Office of Energy in the past to the counties.

Chair Atkinson:

You know the issue well.

Jeff Fontaine (Nevada Association of Counties):

Assembly Bill 239 enhances the renewable energy policy for the State. The bill builds upon the renewable energy policies enacted in 2009 and 2011. It enhances the counties' roles of decision making for abatement and allows counties to consider the impacts of the renewable energy projects they can host. The bill streamlines the permitting process for renewable energy projects

and transmission lines. This is an enhancement of the renewable energy policy. We worked closely with the renewable energy industry and other interested parties on this bill. The Nevada Association of Counties supports A.B. 239.

Jack Mallory (Southern Nevada Building and Construction Trades Council):

The Southern Nevada Building and Construction Trades Council is in full support of A.B. 239. We are especially supportive of the provisions that adjust the minimum wage rate that has to be paid to construction workers on these renewable energy projects and increase the percentage of workers who must be residents of the State from 30 percent to 50 percent. Assemblywoman Kirkpatrick found a technical error in the bill and has proposed an amendment ([Exhibit C](#)). The page and line numbers on the proposed amendment are incorrect. The amendment proposes to change page 11, line 41, and page 12, line 26. Third-party administrators do not provide health insurance; they coordinate benefits and pay claims for health care plans. The amendment is needed to change "provided by" to "provided through." It is a minor technical correction.

Senator Settlemeyer:

I think it would also apply wherever else applicable.

Mr. Mallory:

Those are the only places in the bill that it exists, but I agree with Senator Settlemeyer.

Lisa Foster (City of Boulder City):

Boulder City supports A.B. 239. We appreciate being able to have input on the bill.

Stacey Crowley (Director, Office of Energy, Office of the Governor):

Assemblywoman Kirkpatrick has been supportive of the work of the Office of Energy. Assembly Bill 239 offers a fee structure for green building and renewable energy tax abatements in lieu of some additional funds into the Renewable Energy Fund. The Office of Energy supports the bill.

Senator Hutchison:

I think this is a great idea. I like having the local government bodies involved in the tax abatement analysis and assessment.

Chair Atkinson:

The hearing on A.B. 239 is closed.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 239 WITH THE AMENDMENT PROPOSED BY
ASSEMBLYWOMAN KIRKPATRICK, [EXHIBIT C](#).

SENATOR DENIS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

I will open the hearing on A.B. 33. We do not have possession of the bill, yet. We will have the hearing, but we will wait to vote until we have possession of the bill.

[ASSEMBLY BILL 33 \(2nd Reprint\)](#): Revises provisions governing the partial abatement of certain taxes for certain energy-efficient buildings. (BDR 58-280)

Ms. Crowley:

Assembly Bill 33 is a bill from the Office of Governor Brian Sandoval. The bill restores green building tax abatements for existing buildings. Two years ago, statute changed and disallowed most of the existing buildings from being eligible for tax abatements. This brings existing buildings back into the fold. Assembly Bill 33 is an important step for energy efficiency in existing buildings. There is a large inventory of existing buildings in our State. The Governor promotes the idea of saving energy, reducing energy bills and using those funds for economic development purposes.

The bill increases the number of points needed under the Leadership in Energy and Environmental Design Green Building Rating System. The bill also increases the number of points needed under the energy credits in order to be eligible for tax abatement. This raises the bar to make these buildings more energy efficient before even being eligible for tax abatement. Existing buildings will be limited to a 5-year tax abatement. Currently, new buildings are limited to 10-year tax abatement. The limit for existing buildings is lower because the capital costs are

lower since they are not new construction. There is also a \$100,000 maximum cap per year on existing building tax abatements. Very few if any projects will reach that cap.

The bill includes the ability for counties to approve or deny tax abatement projects. The language is similar to language in A.B. 239. A county can deny a project in accordance with either of two criteria. The county can determine that the cost to the county will outweigh the abatement. If that is the case, the county is allowed to deny the project. An existing building already receiving tax abatement or one that has already applied for tax abatement under the original statute is not eligible for this new tax abatement.

Senator Jones:

Historically, the green building tax abatements were scrutinized because they were misused or overused. Can you provide some assurance that will not happen again under A.B. 33?

Ms. Crowley:

This bill does not address new construction that was scrutinized. This allows existing buildings to apply for tax abatements. Because this bill raises the bar for the number of energy points, it would be harder for buildings to achieve eligibility.

Senator Hutchison:

It sounds like the Governor is in favor of the idea of local government involvement in tax abatements. Can you summarize why that is and what benefits you see with local government involvement?

Ms. Crowley:

Allowing counties to participate has become a theme this year with tax abatements. The tax money that comes into counties' coffers is being affected. In this case, the green building environment is an important one. This does address energy efficiency, which is an important component of our energy policy. The Governor believes we can work with the counties to make sure they understand the value these projects bring to the counties. We have seen some amazing and innovative companies created in Las Vegas because of the green building movement. There have been brand new companies created to recycle materials, and they have been successful because of the tax abatement structure.

Chair Atkinson:

The hearing on A.B. 33 is closed. The work session on A.B. 186 is now open.

ASSEMBLY BILL 186 (2nd Reprint): Revises provisions relating to compensation. (BDR 53-796)

Marji Paslov Thomas (Policy Analyst):

I will read from the work session document ([Exhibit D](#)) explaining the bill. There is one proposed amendment from Jack Mallory included in the work session document.

Mr. Mallory:

The business community had raised objections to certain provisions in A.B. 186. The amendment represents a final compromise. Certain items of information that were required have been deleted from section 5 of the bill. The remaining requirements are that an employer is responsible to provide the rate or rates of pay based on whether an employee is paid by the hour, day, week, salary, piece, commission or otherwise. The employer must also provide the overtime compensation provisions applicable to the employee pursuant to NRS 608.018 and the regular paydays established by the employer in accordance with the provisions of NRS 608.080. This helped alleviate some of the concerns raised by the business community. They wanted clarification on the way these pieces of information could be presented. In the amendment, we created the provision that states unless the information is otherwise provided or made available to a new employee in any other form including, but not limited to a collective bargaining agreement, employee handbook or posting, those pieces of information would be required to be provided.

Senator Hutchison:

These are good changes. I had some concerns with some of the language. Thank you for working with me and the business community.

Dan Yu (Counsel):

Mr. Mallory, I just wanted to be perfectly clear on the intent of this amendment for drafting purposes. Of course, as you know, we're kind of short on time today, and time is of the essence. The way I read this language, the way I am reading it, it actually doesn't really accomplish anything based on the plain language of the

language you have submitted. Really, another way of reading this is to say that you must provide this information unless you have provided this information, because in that provision it is kind of a circular thing. It is kind of redundant. I just wanted to make sure that if maybe there was another nuance to your intent here. If you are saying that, for example, I do not want to put words in your mouth, but this is what I am trying to figure out in my head. Is it your intent to say that if the employee has already obtained this information in any other form, and here is the critical part of it, from someone other than the employer, then the employer would be excused from this obligation set forth in subsection 2 of otherwise providing this information at the time of hire. Because, otherwise, all this says is—because it is not truly an exemption here—it sounds like you are trying to create an exception, but it is not really an exception. All it does is, again, it says you must provide this information in any form, and that is open, you can provide it in any manner you can or want to, but then you go back to the new language you provided that says you are excused from doing this if you provided this information. So, it does not really accomplish anything. So, I just want to make sure I am not missing the point here.

Mr. Mallory:

I structured this the way I did because collective bargaining agreements usually contain all the required information. You cannot require an employer to provide the collective bargaining agreement to the employee. If an employer distributed an employee handbook containing overtime provisions and paydays but not the rate of pay, the overtime and payday provisions would be satisfied. The employer would still have to inform the employee what the rate of pay is when he or she is hired.

Mr. Yu:

Just a quick follow-up. So, I think, if I'm hearing you correctly, Mr. Mallory, what you are saying is if this information is provided or if the employee already has obtained this information from another party other than the employer who you are saying under certain circumstances may not be able to provide this information,

then the employer is actually excused from this obligation of providing the information.

Mr. Mallory:

Correct, the obligation under section 5, subsection 2 of A.B. 186.

Mr. Yu:

Just so you know, based on your clarification of the intent there, whatever legal will wind up drafting depending on whatever this Committee will ultimately adopt or not adopt, it will come out looking differently from your proposed language. Because the way I envision it is there will be a new subsection 3, and it will specifically state that an exemption is provided with respect to the obligations of subsection 2 if that information has already been obtained by the employee by other means. So, it would excuse the employer. I think that is what you are trying to get at.

Mr. Mallory:

That is correct.

Senator Settlemeyer:

I want to report the information I received from the labor commissioner after the hearing on A.B. 186. Since 2012, the Office of Labor Commissioner, Department of Business and Industry, collected \$2.8 million in non-refunded wages and \$683,000 in penalties based on those claims. The uncollectable wages amounted to \$140,000 for the fiscal year; the calendar year would have amounted to approximately \$171,000. I appreciate the work done on this bill. I am still concerned about diverting penalty money that is supposed to be given to the individual who was underpaid. That was the original intent—to make the individual whole after he or she had to borrow money. I cannot support the bill.

Chair Atkinson:

I would like others to get on record because there were many involved in this.

Samuel McMullen (Las Vegas Metro Chamber of Commerce):

The Las Vegas Metro Chamber of Commerce is in favor of the proposed amendment. Robert Ostrovsky of the Nevada Resort Association asked me to

express his support as well. We understand the comments and concerns of Mr. Yu.

Thoran Towler (Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry):

I support A.B. 186 and the proposed amendment. The restitution fund is something I see a need for every day. This will have a great benefit for Nevada.

Senator Hardy:

I appreciate working with Mr. Mallory on the amendment. I also appreciate the cleanness that it is and how it will continue to be.

Chair Atkinson:

The work session on A.B. 186 is closed.

SENATOR HUTCHISON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 186 WITH THE AMENDMENT PROPOSED BY JACK MALLORY INCLUDED IN THE WORK SESSION DOCUMENT, [EXHIBIT D](#).

SENATOR JONES SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR SETTELMAYER VOTED NO.)

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Chair Atkinson:

I will recess the meeting at 8:54 p.m. We will reconvene on the Senate Floor to vote on A.B. 33 once we have possession of the bill.

The meeting is reconvened at 9:47 p.m. on the Senate Floor. We heard testimony earlier from the Office of the Governor. There was no opposition to this bill.

Senator Hardy:

Are there any amendments to A.B. 33?

Chair Atkinson:

No.

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SENATOR HARDY MOVED TO DO PASS A.B. 33.

SENATOR HUTCHISON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Chair Atkinson:

The meeting is adjourned at 9:48 p.m.

RESPECTFULLY SUBMITTED:

Caitlin Brady,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 239	C	1	Jack Mallory	Proposed Amendment from Assemblywoman Kirkpatrick
A.B. 186	D	2	Marji Paslov Thomas	Work Session Document