

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

**Seventy-Fourth Session
May 18, 2007**

The Joint Assembly Committee on Commerce and Labor and the Senate Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:17 p.m., on Friday, May 18, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblyman John Ocegüera, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Francis Allen
Assemblyman Bernie Anderson
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman David R. Parks
Assemblyman James Settelmeyer

SENATE COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck

Minutes ID: 1342



Senator Michael A. Schneider
Senator Maggie Carlton

ASSEMBLY COMMITTEE MEMBERS ABSENT:

Assemblyman Morse Arberry, Jr. (excused)

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Russell Guindon, Senior Deputy Fiscal Analyst
Earlene Miller, Committee Secretary
Gillis Colgan, Committee Assistant
Jeannine Wittenberg, Committee Secretary

GUEST LEGISLATORS PRESENT:

Assemblywoman Debbie Smith, Assembly District No. 30

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

Chair Oceguera:

We do not have the bill draft but will proceed with the history. Mrs. Smith and Mrs. Kirkpatrick, welcome to the Committee.

Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1:

We passed Assembly Bill No. 3 of the 22nd Special Session that allowed for green building in the State. We were very aggressive and felt that we were going to be the leader in the nation. You may follow in the binder which we provided ([Exhibit C](#)). You can see the language in the bill. We had a great response, but within the bill the process was cloudy. We proposed a Senate bill which would allow us to assess the situation and move forward. We are committed to Nevada to continue being the leader in green building. The intent from last session was that through the Leadership in Energy and Environmental Design (LEED) that we would be promoting energy efficiency. However, we did not promote energy efficiency as well as we had hoped. Today, we want to emphasize the promotion of the energy efficiency component of LEED. In A.B. No. 3 of the 22nd Special Session we included regulations that were to be put in place, but those regulations changed in the last two years from the legislative intent. It is important to address those issues because they went further than we were comfortable with, and the impact to the State was much

different than anticipated. The Office of Energy had some regulations which they adopted and the Office of Economic Development adopted regulations; however, the process was unclear. We are here to give our commitment to the State to be the leader in green building.

Assemblywoman Debbie Smith, Assembly District No. 30:

We have spent a lot of time looking at the information we gathered regarding what we passed in 2005 and what has happened since. The details of the issues are in the binder ([Exhibit C](#)). I would like you to look in the "History" section at the highlights of A.B. No. 3 of the 22nd Special Session as well as to go through some of the points which brought us to where we are today and the bill we passed this session, Senate Bill 567. You will see some of the language in the bill and an overview of what has happened with the various regulatory agencies named in A B. No. 3 of the 22nd Special Session. There are some charts which give you examples of the results of that bill. Under the tab "Other States," there is an overview of what is happening in other states. This is important because we are the leader in the country in LEED standards and we desire to be a state that builds environmentally friendly buildings. Our desire is to build energy efficient buildings. With the incentive program, we are the leader in this area. There is a chart at the end of the section, titled "LEED Buildings." It became apparent that you can consider other states' legislation, but Nevada is unique with the type of buildings that we are building. We are building larger buildings than most states, and the construction costs are higher. Therefore, any incentive or abatement is growing exponentially. Nevada has seven of the ten largest buildings in the country under construction or being proposed. In this bill draft, it is our desire that everyone understands that we want to move forward on this issue and restructure this legislation so that it is more responsible and encourages energy efficiency instead of sustainability. We still desire to be a leader, but we can do it by providing structure and providing levels of achievement rather than giving everyone one level of abatement regardless of how good their building program is.

Chair Ocegüera:

Mrs. Smith, could you explain the levels of LEED and give us an idea of what other states do?

Assemblywoman Smith:

I will let Mrs. Kirkpatrick do the LEED designations.

Assemblywoman Kirkpatrick:

Leadership in Energy and Environmental Design is a very extensive program. There is a whole set of criteria for existing buildings and a different set for new

construction. Nevada allows buildings to be built in our State that are energy efficient. The Office of Energy in June 2006 adopted regulations which said new construction would have to meet the 2.1 version or 2.2 version criteria of LEED. There is a scorecard used to meet these levels in different categories. How a project is designed is where it fits within the criteria. There are few things that are required. For existing buildings, LEED allows retrofitting for energy efficiency. They have an entire program on how they define their terms. For example, core and shell is a component of LEED and is based on architectural needs. In 2001, they discussed new ways to be energy efficient and to expand beyond their initial focus on industrial parks. They expanded into commercial development and most recently into residential building. They are moving forward to be more energy efficient. Regarding core and shell standard, LEED discussed the issues with people throughout the nation in 2001. In 2003, they initiated a pilot program; in 2005, they discussed how they wanted to progress; in 2006, they determined their parameters; and in 2007, they adopted the program. They do a very extensive background study and complete projects so they make sure they meet the requirements when they complete their scorecards. In regard to the core and shell of a building, a silver level would require a score of 28 through 32 points, and the gold level is 33 through 38 points. For new construction, there are 71 points possible. Platinum is the highest rating level. Energy efficiency is part of the program as are environmental impacts, such as dust management during construction.

Chair Oceguera:

We will get the scorecards to the Committee members. Do different states give different abatements based on different levels of LEED?

Assemblywoman Smith:

The chart in the last tab of your binder demonstrates that. The majority of the states do not offer an incentive. Many have developed a LEED certification for public or state buildings, but not for privately owned buildings. New Mexico has an incentive program, and their total amount of tax credits shall not exceed an aggregate amount of \$5 million for commercial buildings. They are focused on sustainability more than energy efficiency. Other states offer different incentive programs. There are some abatements for income tax. One state gives a reduction for building permits for construction to LEED standards. There is a large range, but Nevada is by far the highest incentive program, even with the restructuring we are proposing in this bill draft. We want to focus on how we plan to move forward in a better structured and more fiscally responsible way. Next week we hope to have another hearing to discuss other issues and the retrospective issues.

Chair Ocegüera:

That may be an opportunity. We can talk about that, take some questions and then turn to the bill draft.

Senator Townsend:

It is appropriate to have some historical perspective. For many years, this State did not grow very quickly. Southern Nevada was afforded the lowest energy rates in the fourteen western states for about 20 years. In about 1978, when the first energy crisis hit, people started to pay attention to energy costs. In the mid-1980s this body passed the Utility Resource Planning Act to require utilities to put forth a plan for 5, 10, and 20 years which the Public Utilities Commission could review with consumer advocates to make the best choices for the future of Nevada. Those choices had to be the lowest cost options. For the next 15 to 18 years the lowest cost option was to purchase energy on the open market, so we did not build any power or energy plants for about 15 or 18 years. As a result, the next energy crisis hit when California passed the deregulation bill and the impact on Nevada was substantial. We provided a number of measures, including the renewable portfolio standard, which is still the best in the country. We have encouraged renewable energy to a significant extent. As a result, we analyzed some of the things that were creating problems for our consumers relative to their bill.

One of the things that gave great concern to many of us was the component known as fuel and purchase power. I believe the Office of Energy is now using the \$8-9 billion figure that leaves the State in order to pay for those programs. We had to make a decision with regard to how much more energy we needed and what the problems of the State were. Since over 50 percent of what we need in the State is bought on the open market, we had to make a decision to build more power plants or reduce consumption. The focus became not only to fill the gap with renewable energy, but to concentrate on consumption, which meant we wanted to focus on conservation and weatherization. There has been a massive effort of which A.B. No. 3 of the 22nd Special Session was a large component. In southern Nevada our base load is about 2,600 megawatts, but when it gets hot, it jumps to about 6,000 megawatts. The most expensive energy you can buy is "peak power on the spot market." Conservation at the peak level is our problem. How do we make things more efficient? The efforts made in A.B. No. 3 of the 22nd Special Session and those being made today are good faith efforts to help Nevadans with that problem. It is important to understand the goals because that will help us process this bill. I want to thank my colleagues, the staff who worked with them, and you Mr. Chair, for affording us the time for this joint hearing.

Chair Oceguera:

Are there any questions for Mrs. Smith and Mrs. Kirkpatrick?

Assemblywoman Smith:

The situation that brought us to passing S.B. 567 was that there was a great deal of concern about the fiscal impact and perhaps the unintended consequences of A.B. No. 3 of the 22nd Special Session. We found that it had a huge impact on our budget. I would like to have our fiscal staff talk about the fiscal impact as they have been able to calculate it and what it means to our revenue.

Russell Guindon, Senior Deputy Fiscal Analyst:

I want to refer you to the table in your binder titled "Estimates of LEED Property Tax Abatements as Authorized in A.B. 3 (22nd Special Session)." This was compiled jointly with the staff from the Department of Taxation and Fiscal Analysis Division Staff at the request of the legislators. We were asked to look into what the property tax abatement impacts could be if the properties would get the silver level certification under LEED. This is based on information provided by these entities to the Department of Taxation, The Office of Energy, and the Commission of Economic Development. The Department of Taxation was able to get information on the value of the land which would be eligible for the abatement. For the value of the improvements, we looked at the potential project costs in public information and then made the assumption that approximately 75 percent of that would become taxable value in its first year. We used the tax rates that these entities would be subject to based on the 2007 tax rates. The numbers are for projects that had contact with the public agencies named, but the fiscal staff does not mean to imply that this could be inclusive of all projects that may end up applying for the property tax abatements. The property tax abatements are different from the sales tax exemptions. You cannot get the property tax abatement until the project is completed and has a LEED certification at a required level. The top part of the table shows the total property tax reduction loss of revenue by year based on assumptions of when these properties would first be eligible for the abatement. We assumed that they would be eligible for the 35 percent abatement for the 10-year period. The middle box is the amount that would be lost by the Clark County Unified School District for the 75-cent operating rate that they use for education. The bottom table is the amount of property tax reduction to the Clark County School District from the debt rate from abatements allowed.

Chair Oceguera:

Are there any questions for Mr. Guindon?

Senator Townsend:

Mr. Guindon, we appreciate your being able to do this on short notice. You mentioned some of the analysis that went into this was the result of newspaper stories. There are projects here with which many of us are familiar. One is unique because its prime tenant is a public entity and the terms of the lease include a 50 percent buy-out of that project, which means the projected totals would be approximately halved. I do not want anyone out there, including the press, to think that this is a definitive number, because it is not. It has to be thought through year by year, line by line, and project by project. I appreciate what you have done to give us some sense of the substantial magnitude of this, but if anyone is going to sit down with our current budget and apply this, he will have a difficult time getting accurate numbers.

Russell Guindon:

That is a very good observation. This was a very difficult request without having the best information available.

Assemblywoman Smith:

Indeed, this is a snapshot of some of the known projects to give this Legislature an idea of the fiscal impact of A.B. No. 3 of the 22nd Special Session. We are aware that this may be a portion of the projects that are under consideration, and there may be extenuating circumstances, but the staff did a phenomenal job of trying to build a picture for us.

Assemblyman Anderson:

I noted in the history report that some of the northern developments like the Patagonia project are not included. Some of these are going to have an impact in the smaller counties. Have you projected what those numbers might be?

Russell Guindon:

We were aware of the Patagonia project which achieved the gold level of LEED. We were requested to specifically look at Clark County and the potential impact on the school operating rate. In a ten year cycle, the Patagonia project could be a \$1 million impact. I do not deny that a certain project could have a significant impact in a small county because of the size of the abatement versus the size of the budget in local governments, but I do not have any information available about those projects.

Assemblyman Anderson:

My concern is the fiscal impact may be felt differently. There may be a benefit that is offset by additional employment. We should recognize that the smaller counties have a set of problems that are unique.

Assemblywoman Buckley:

I would like to commend Assemblywoman Kirkpatrick, Assemblywoman Smith, and Senator Townsend for all of the time spent to come up with some ideas for this Committee and how we move forward. What do you think is important for us to look at to make sure there are no mistakes? What policy considerations do we need to keep in mind as we process this bill to balance environmental issues, energy conservation issues, and to make sure schools, local governments, and other operating expenses are not harmed?

Assemblywoman Smith:

We have focused on problems that have developed since 2005 and what we could do to fix those. We believe there was not enough structure. We believe this bill lends itself to a streamlined structure. We had many layers and steps and things got too convoluted. We have streamlined the process and have better defined our expectations of what we believe the abatement would be, rather than leaving that open up to 50 percent as it was in the last legislation. I think the policy of defining our expectations and having a higher expectation for energy efficiency is important. We need more clarification and structure. This bill does that.

Assemblywoman Kirkpatrick:

Going through this process, it was apparent that the rules kept changing from the legislative intent. We believe there needs to be a central location, so the project developers know where to start, what they need to do, and where they have to go. In a portion of this bill it says the Director of the Office of Energy is where you begin the process. We noted the application has no date and no signature line, so we defined what we believe the Legislature needs and expects from the Office of Energy to make this program as successful as the program is to date. We have spelled out that the Office of Energy will be the one that puts in place how the process will work. I believe it is good policy to set deadlines. We have defined for the Office of Energy that you have 36 months to move forward. We are focusing on energy efficiency, and we believe that we have to keep our schools whole. It is important to our communities that this provides for a healthy environment. These are all positive quality of life issues. This is what Nevadans deserve. It is important that Nevada be a leader in this area, and we want to encourage doing the best. We need to put this all under one title so that it is clear-cut and we all know what is available.

Assemblywoman Smith:

This bill will streamline this process. With three agencies involved, we had two that set regulations, and one that had no written rules adopted. Therefore, we saw various forms of information that went out to the developers, including

complex procedures on how to get tax deferrals. The policy implications of this and how they can be implemented are huge. That was a big downfall over the past two years which led to where we are today. We need rules and regulations defined in this statute.

Senator Townsend:

To answer Speaker Buckley's question, we look for the problems of the past, so we can make sure they are clear to us. I will refer you to Section 7 of A.B. No. 3 of the 22nd Special Session, which addresses the exemption from taxes imposed by the Chapter on gross receipts from the sale or storage, under (d). The new language in the bill was products and materials used for building LEED standard buildings. Section 42 says Section 7 of this act, which is the Sales Tax Abatement, becomes effective upon passage. Approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act ends on October 1, 2005, for all other purposes. It is clear. The regulation was never adopted so those who had an interest in applying did not know against which standard they could be held. The proposal in the bill draft starts to narrow that uncertainty, has specific guidelines, and has specific requirements so that anyone who is interested knows exactly what they have to do. It is important to go back into the original bill, find the problems, and correct them.

Assemblywoman Buckley:

Thank you to all who responded. I thought it was clear the last time, and I want to make sure as we go forward that we are incredibly specific so no one misinterprets, expands, or thwarts our legislative intent. Our intent is to consider the needs of government and the needs to promote energy and environmental standards in building. I want to make sure we give very little leeway to any regulatory agency. I would like to look at every option we give them on regulations so that we are defining the standards and so the rules cannot change in the middle of the game to the detriment of schools, local governments, and the State.

Chair Ocegüera:

Are there other questions? [There were none.]

Assemblywoman Kirkpatrick:

In Section 2, we define who is going to be taking the applications and what version will be used for the application process. In Section 2, line 17-19, we wanted to be sure the LEED standards had to be in place for awhile before we decided to adopt them. On page 4, it says that if the applicant changes his plans in the middle of the process by more than 10 percent, he will have to

start over. It is consistent with the way local governments require applications to be completed. This is so we can be responsible legislators and plan according to what the actual fiscal impact will be throughout the years. On page 5, lines 7-12, it describes exactly what incentives we are giving to move forward. By giving these incentives, it is the most aggressive program in the nation. We also included what we require the Director of the Office of Energy to do so it will be very clear who has or has not complied.

Chair Oceguera:

Mrs. Buckley has a question.

Assemblywoman Buckley:

On Section 2, lines 14-15, where it says "or a later version," might it make sense to have it be version 2.1? Then next session, we can see what was added, make sure it makes sense for our State, and consider adding it while we weigh the fiscal impact. When you were describing "core and shell," for example, that was not included in our last legislation. That way we would take the affirmative step of considering whether that was something we wanted to add and help us better gauge the financial impact.

Assemblywoman Kirkpatrick:

If you look at Section 2, line 19, we specified that it had to be in place for five years. We do not want to hamper a project from being better. I will take that into consideration.

The Office of Energy would then be required to give out the information to the county assessor's offices and give it to the Department of Taxation. We believe the Office of Energy is the correct place to determine whether a project should move forward. There are certain sections of this bill that we have included from other titles. We think it is important to keep all of our energy abatements together, so it is clear. Once a LEED certificate is obtained, there is no follow-up. We want to enforce that if you are going to continue to get the abatement from the State, you need to have an energy audit, to prove that your building is still efficient. The Department of Energy has the capability to ask for the correct parameters. We have asked to repeal portions regarding public projects from A.B. No 3 of the 22nd Special Session. We have pilot projects that are in another portion of the bill that are being repealed.

Assemblywoman Smith:

There may be some places where the 50 percent abatement is still in the draft, and these need to be cleaned-up. Mrs. Kirkpatrick clearly outlined the three levels of partial abatement that would be 25, 30, and 35 percent. We

want that kept in the bill. She mentioned there is language in the bill that keeps all portions of school funding whole and are excluded from any abatement. We are all concerned about what we have learned this Session about the impact of A.B. No. 3 of the 22nd Special Session on our education budget. This bill does not include the sales tax deferral. We believe that was intended to be a short term jump-start issue, and it is not part of this new legislation. The remainder of the bill is other provisions that are currently in statute that have been put in the same section of legislation for this bill draft.

Chair Oceguera:

Are there any questions for the Committee?

Senator Carlton:

You mentioned earlier, the lack of regulations. When the opportunity to implement this program was given to these agencies, why did one particular agency decide not to draft any regulations? Was any reason given?

Assemblywoman Smith:

There was a decision made not to do so, possibly because they were not directed to do so. We have believed that on an issue this substantial and important that written rules and regulations should have been set forth.

Assemblywoman Buckley:

I did not think that was what happened. I thought there was an effort to say to get the sales tax exemption, you had to have a signed construction contract or some firm rules, and that you had to have evidence. It was promulgated, and people wanted to get in on it; but all of a sudden those efforts were withdrawn, and we ended up with no regulations.

Assemblywoman Smith:

My point was that ultimately a decision was made that regulations did not need to be set. We had two agencies that did and one agency and the Commission that did not. In my mind, a conscious decision was made not to set regulation. We saw what was in writing and given to the general public change substantially from December 2005 to June 2006.

Senator Townsend:

I think it should be noted that what I read into the record in terms of effective date of Section 7 of A.B. 3 of the 22nd Special Session specifically directed that department to draft a regulation. It gave 90 days to promulgate a regulation for the effective date of August 1st. That did not occur. How can people decide to submit a letter if they do not know what to do?

Assemblywoman Kirkpatrick:

We have included in your binder indications of how regulations changed from the original intent of the bill. It is important that you recognize that authority now needs to be specified by the legislature, and that is why we have included it in the bill draft. We need to do it for them. We believe there was a lack of due diligence and we ask you to support the set parameters we have laid out.

Chair Ocegüera:

Are there any questions?

Senator Hardy:

In the Government Affairs Committee, we have had some discussions about including amendments relative to the property tax abatements as they relate to the school district. I have indicated to the Senate Chairman of Commerce and Labor and would like to indicate to our colleagues in the Assembly, that we are going to have a discussion about that as well. We will discuss the property tax abatements as they relate to the school district, redevelopment, and other areas throughout the statute. I am not indicating or saying that anything is going to be done one way or the other, but I suggest that we deal with it globally and not on an ad hoc basis.

Assemblywoman Kirkpatrick:

One of the concerns was that the Office of Economic Development tries to bring business to our State, and the Office of Energy promotes energy efficiency and good energy policy; however, the two do not mix. We said in this bill that if you are receiving redevelopment funds or Tax Increment Financing Funds (TIFF), you cannot receive the LEED abatement. The reason is that in redevelopment programs, the property holder does not pay property taxes for those years. We feel that 40 years of not committing to our State through property taxes is unfair. Therefore, we specified that those entities could not work together to help promote energy efficiency.

Assemblyman Mabey:

Section 3 deals with abatements. Other than the taxes for the schools, will the other parts of the taxes be abated?

Assemblywoman Smith:

Absolutely, that is how the structure works. Previously we did not have any carve-out for school funding. This bill keeps the schools whole in an abatement situation.

Assemblyman Mabey:

Could it affect the schools indirectly?

Assemblywoman Kirkpatrick:

I understand what you are saying; however, our job is to encourage business to come to our State. By saving, being energy efficient, and by bringing new business here, our sales tax continues to grow with our diversified economy. The incentive that is being sought will be returned ten-fold to our community. By our incentives being high, we will probably not recover our money quickly. I think that reining the program in as we have done in Section 3 is absolutely needed.

Chair Oceguera:

Are there further questions?

Assemblywoman Smith:

I would like to thank my colleagues and our staff.

Chair Oceguera:

I would like to thank you and our staff as well. The Committee members should take some time to study the draft. We will close the hearing on this bill draft for tax abatements on green buildings.

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Senator Townsend:

We will be taking up the issues put forward here today on Tuesday at 7:00 a.m.

Chair Ocegüera:

The meeting is adjourned [at 2:37 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman John Ocegüera, Chair

DATE: _____

Senator Randolph J. Townsend, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Commerce and Labor/Senate Committee on Commerce and Labor

Date: May 18, 2007

Time of Meeting: 1:17 p.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|--|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| A.B. 621 | C | Assemblywomen Kirkpatrick and Smith | Informational Binder on Leadership in Energy and Environmental Design (LEED) |