

LCB File No. R116-07

**PROPOSED REGULATION OF THE
DIRECTOR OF THE OFFICE OF ENERGY**

(This draft replaces the one posted August 26, 2007)

Tax Abatements for Green Buildings

Explanation--Matter in *italics* is new, matter in brackets [] is material to be omitted.

Purpose: To implement the provisions of Assembly Bill 621 from the 2007 session of the Nevada Legislature.

Authority: §§ 2-3, 14, 15.5 of AB 621, Act of June 15, 2007, ch. 539, 2007 Nev. Stat. ___.

Address of Agency: The agency promulgating this regulation is the Director of the Nevada State Office of Energy (Director), whose address is 727 Fairview Dr. Carson City, Nevada 89701. The contact person is Hatice Gecol, Ph.D., Director, e-mail hgecol@gov.nv.gov; phone (775) 684-5670; fax (775) 687-9714. The Director is being advised and assisted by the Nevada Attorney General's Office in the drafting of these regulations. The contact person is Doug Walther, Senior Deputy Attorney General, Attorney General's Office, Capital Complex, Carson City, Nevada 89710, phone (775) 684-1234; fax (775) 684-1108

Section 1. Title 58 of the Nevada Administrative Code is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 21, inclusive, of these proposed regulations.

Sec. 2. *As used in sections 3 to 25, inclusive, of these proposed regulations, unless the context otherwise requires, the words and terms defined in sections 3 to 25, inclusive, of these proposed regulations, have the meanings ascribed to them in those sections.*

Sec. 3. *“Building or Other Structure” means an improvement on real property that is being considered for or has been granted certification by the U.S. Green Building Council*

Sec. 4. *“Applicable LEED Standard” means the version of the LEED Standard in effect at the time the applicant registers its project with the U.S. Green Building Council.*

Sec. 5. *“LEED” means Leadership in Energy and Environmental Design.*

Sec. 6. *“LEED accredited professional” means a person who holds a LEED Accredited Professional Certificate issued by the U.S. Green Building Council.*

Sec. 7. *“LEED-EB” means the LEED Green Building Rating System for Existing Buildings, Upgrades, Operations and Maintenance.*

Sec. 8. *“LEED Green Building Rating System” means those portions of the Leadership in Energy and Environmental Design Green Building Rating System developed by the U.S. Green Building Council that are adopted by the Director pursuant to section 16 of these proposed regulations.*

Sec. 9. *“LEED-NC” means the LEED Green Building Rating System for New Construction & Major Renovations.*

Sec. 10. *“LEED-CS” means the LEED Green Building Rating System for Core and Shell Development.*

Sec. 11. *“LEED Standard” means all versions of an individualized system within the Green Building Rating System including, but not limited to, LEED-NC, LEED-EB and LEED-CS.*

Sec. 12. *“Partial Tax Abatement” means a partial abatement from the tax imposed on real property by chapter 361 of NRS.*

Sec. 13. *“Pre-2007 applicant” means an applicant for partial tax abatement for a construction project that includes a building or other structure:*

- 1. Which is constructed pursuant to a preconstruction or construction contract executed on or before December 31, 2005;*
- 2. Which is part of a construction project registered with the Office of Energy pursuant to the former provisions of NRS 361.0775; and*
- 3. For which an opinion letter was issued by the Department of Taxation before February 1, 2007, stating that the project will qualify for a partial sales and use tax exemption under Assembly Bill No. 3 (Special Session 2005) if certain conditions are met.*

Sec. 14. *“Pre-2007 Green Building Rating System” means the Green Building Rating System adopted by the Director pursuant to the former provisions of NRS 701.217 as that system existed prior to June 15, 2007.*

Sec. 15. *“Significant change in the scope of the project” means:*

- 1. The change by more than 10% in the gross square footage of any building or other structure for which a partial tax abatement is sought;*
- 2. A change in the level of LEED certification being sought if such change will affect the amount of partial tax abatement being sought; or*
- 3. Any other change which will change the amount of the partial abatement of taxes being sought by more than 10%, provided, however, that changes resulting from increases in costs relating to the project as represented in the application, including any amendments, or disputed claims with a contractor or supplier relating to those costs, shall not be considered a significant change in the scope of the project until they are reasonably final and known to the owner.*

Sec. 16. *1. Except as otherwise provided in Section 17 of these proposed regulations, pursuant to section 2 of AB 621, the Director hereby adopts by reference all versions of the following LEED Standards:*

- (a) LEED-NC;*
- (b) LEED-EB; and*
- (c) LEED-CS;*

2. The LEED Green Building Rating System is adopted for use in this State with regard to buildings or structures that are not public buildings or structures for the purposes of determining eligibility for tax abatements or tax exemptions that are authorized by law to use such a Green Building Rating System.

3. A copy of the LEED Green Building Rating System may be obtained at no cost from the U.S. Green Building Council, 1015 18th Street, N.W., Suite 508, Washington, D.C. 20036, or on the Internet at <http://www.usgbc.org>.

Sec. 17. *1. The Green Building Rating System adopted by the Director pursuant to Section 16 of these proposed regulations shall not include any LEED Standard:*

- (a) that has not been included in the LEED Green Building Rating System for at least 2 years at the time proof is provided that the building or other structure meets the equivalent of the silver level or higher of the Green Building Rating System adopted by the Director; and*
- (b) for homes.*

2. As used in this section, “homes” has the meaning ascribed to it in subsection 3 of Section 2 of AB 621.

3. The Green Building Rating System adopted by the Director pursuant to Section 16 of these proposed regulations shall require a building or other structure to obtain:

(a) At least 3 points of credit for energy conservation under LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), to meet the equivalent of the silver level;

(b) At least 5 points of credit for energy conservation under LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), to meet the equivalent of the gold level;

(c) At least 8 points of credit for energy conservation under LEED Green Building Rating System Energy and Atmosphere Credit 1 (Optimize Energy Performance), to meet the equivalent of the platinum level; and

4. An applicant for partial tax abatement shall utilize an independent third party commissioning firm to facilitate Fundamental Commissioning of the Building Energy Systems or Existing Building Commissioning, as applicable, as required by LEED Energy and Atmosphere Prerequisite 1.

Sec. 18. *1. A person who, with respect to a construction project involving a building or other structure, wishes to apply to the Director pursuant to Section 3 of AB 621, and any regulations adopted pursuant thereto, for a partial abatement from the tax imposed on real property by chapter 361 of NRS must submit an application to the Office of Energy on a form prescribed by the Director.*

2. The form to apply for a partial abatement from the tax imposed by chapter 361 of NRS must include the following:

- (a) The name, address and telephone number of the applicant;*
- (b) The name and address of the owner of the affected real property, if the applicant is not the owner;*
- (c) The address of the real property;*

- (d) Any project title associated with the development or modification of the real property;*
- (e) For each building or other structure included within the construction project:*

- (1) The gross square footage of the building or other structure;*
- (2) The proposed use of the building or other structure;*
- (3) The estimated cost of its design and construction or retrofit;*
- (4) The actual or estimated date of the start of construction or retrofit;*
- (5) The expected date of occupancy of the building or other structure;*
- (6) A copy of the executed preconstruction and construction contract, as applicable;*
- (7) Proof that the building or other structure has been registered with the U.S. Green Building Council;*

(8) The Applicable LEED Standard on which the certification of the building or other structure will be based;

(9) A statement containing the level and number of points of the Applicable LEED Standard at which the applicant expects the building or other structure to be certified in the form of a checklist identifying the specific LEED credits that the project team intends to achieve;

(10) A statement whether any funding for acquisition, design or construction of the building or other structure, or associated land, is being provided by any governmental entity in this State;

(11) A list of all sources of funding provided by any governmental entity in this State for the acquisition, design or construction of the building or other structure, and associated land;

(12) A statement whether the owner of the building or other structure is or expects to receive any other abatement or exemption from taxes pursuant to (NRS Chapter created by AB 621) or NRS 361.045 to 361.159, inclusive, from the taxes imposed pursuant to chapter 361 of NRS.

(f) The name and contact information of the LEED accredited professional assigned to the design team for the project or other person designated as the contact person on the application;

(g) A statement whether the building or other structure, or any part thereof, is or expected in the future to be exempt from the taxes imposed pursuant to chapter 361 of NRS pursuant to provisions other than those set forth in AB 621.

(h) A list of any improvements in the project that are not expected to be considered for LEED certification;

(i) If the project is registered with the U.S. Green Building Council in a campus or multi building setting, a list of buildings or other structures on the affected real property and construction phases of each building or other structure; and

(j) Any other information requested by the Director.

3. Upon receipt of all information required by this section, the Director will:

(a) Notify the applicant in writing acknowledging that the application has been processed; and

(b) Forward a copy of the application and the written notification provided to the applicant to the:

- (1) Chief of the Budget Division of the Department of Administration;*
- (2) Department of Taxation;*
- (3) County assessor;*

- (4) County treasurer; and*
- (5) Commission on Economic Development.*

4. As used in this section “funding for the acquisition, design or construction of the building or other structure, and associated land” includes equity, any form of indebtedness, grants, gifts, or anything of value.

5. The applicant must promptly amend the application if there is a significant change in the scope of the project.

6. The Director will not accept an application pursuant to this section for a building or other structure that on the date the application is registered has been issued a certificate of occupancy or has been certified by the U.S. Green Building Council, whichever occurs later.

Sec. 19. *1. If an application for a partial abatement is submitted for a project that has not been completed on the date of that submission and there is a significant change in the scope of the project after that date, the applicant must amend the application to include the change or changes within 60 days after the occurrence of the change or changes. If the applicant fails to amend the application in a timely manner the Director may:*

- (a) Allow a partial abatement of those portions of the project that were part of the original application, including timely amendments; or*
- (b) For good cause shown, extend the time within which to amend the application.*

2. Upon receipt of an amendment to an application for a partial abatement of taxes registered pursuant to Section 18 of these proposed regulations the Director will forward a copy of the amendment to the:

- (a) Chief of the Budget Division of the Department of Administration;*
- (b) Department of Taxation;*
- (c) County assessor;*
- (d) County treasurer; and*
- (e) Commission on Economic Development.*

Sec. 20. *1. Within 48 months after an application of a partial tax abatement is registered with the Director pursuant to Section 18 of these proposed regulations, or within such time as the Director, for good cause shown, extends the deadline, the applicant must submit to the Director:*

- (a) Proof that the building or other structure meets the equivalent of the silver level or higher of the Green Building Rating System adopted by the Director as that system existed at the time the applicant applied for a partial tax abatement; or*
- (b) An application to extend the period for providing such proof.*

2. If an applicant has not submitted the proof or an application required by subsection 1 the Director will consider the application abandoned and notify the:

- (a) Applicant;*
- (b) Chief of the Budget Division of the Department of Administration;*
- (c) Department of Taxation;*
- (d) County assessor;*
- (e) County treasurer; and*
- (f) Commission on Economic Development.*

3. If after reviewing the proof submitted by the applicant pursuant to subsection 1 the Director concludes that the building or other structure is eligible for a partial abatement of

taxes the Director shall issue a certificate of eligibility for the abatement and provide a copy to the:

- (a) Applicant;*
- (b) Chief of the Budget Division of the Department of Administration;*
- (c) Department of Taxation;*
- (d) County assessor;*
- (e) County treasurer; and*
- (f) Commission on Economic Development.*

The certificate of eligibility shall include the duration of the partial abatement of property taxes, the annual percentage of the partial abatement of property taxes as provided in subsection 4 of Section 3 of AB 621, and identify each building or other structure to which the abatement should be applied. The Director will include as part of the certificate of eligibility a statement of facts, conclusions of law and order explaining the Director's reasons for issuing the certificate.

4. If after reviewing the proof submitted by the applicant pursuant to subsection 1 the Director concludes that the building or other structure is not eligible for a partial abatement of taxes the Director shall issue a certificate of ineligibility for the abatement and provide a copy to the:

- (a) Applicant;*
- (b) Chief of the Budget Division of the Department of Administration;*
- (c) Department of Taxation;*
- (d) County assessor;*
- (e) County treasurer; and*
- (f) Commission on Economic Development.*

The Director will include as part of the certificate of ineligibility a statement of facts, conclusions of law and order explaining the Director's reasons for issuing the certificate of ineligibility.

5. The abatement becomes effective July 1 of the next fiscal year following the issuance of certificates of eligibility issued between July 1 and March 30 of the current fiscal year. For certificates of eligibility issued between April 1 and June 30 of the current fiscal year, the abatement becomes effective July 1 of the year after the next fiscal year.

6. A certificate of eligibility and certificate of ineligibility issued pursuant to this section shall be considered a final order of the Director for purposes of judicial review.

Sec. 21. *The Director will accept as proof that the building or other structure for which a partial abatement of taxes is sought meets the equivalent of the silver level or higher of the Green Building Rating System adopted by the Director:*

- 1. An original or certified copy of a letter from the U.S. Green Building Council informing the applicant that the building or other structure meets the LEED silver or higher level; or*
- 2. Any other information acceptable to the Director that in the Director's judgment evidences compliance with the requirement of the Green Building Rating System adopted by the Director.*

Sec. 22. *1. On an annual or other reasonable basis the Director may require the applicant who has received a certificate of eligibility pursuant to Section 20 of these proposed regulations to submit to the Director such information as the Director may require to*

determine whether the parcel on which the building or other structure is located is receiving another abatement or exemption from taxes pursuant to __ (The NRS Chapter created by AB 621) __ or NRS 361.045 to 361.159, inclusive, from the taxes imposed pursuant to chapter 361 of NRS.

2. Within 60 days after the end of the second, fifth and eight years after the building owner has received a partial abatement of property taxes pursuant to Section 20 of these proposed regulations, the current owner shall submit to the Director written re-certification from a third party commissioning firm stating that the building or other structure energy systems are still operating in general compliance with the original project requirements (with particular focus and emphasis on certifying that the energy conservation measures implemented as part of the original LEED certification are still being achieved). The third party commissioning firm providing the re-certification letter should typically be the same firm that provided the original “Fundamental Commissioning for LEED-NC and LEED-CS” or “Existing Building Commissioning for LEED-EB” services on the project.

3. Upon determining that the parcel on which the building or other structure is located is receiving another abatement or exemption from taxes pursuant to __ (The NRS Chapter created by AB 621) __ or NRS 361.045 to 361.159, inclusive, from the taxes imposed pursuant to chapter 361 of NRS the Director will notify the owner and the Department of Taxation in writing that the certificate of eligibility relating to the building or other structure has been suspended, indicating the term of the suspension.

4. Upon determining that the building or other structure may have ceased to meet the equivalent of the silver level or higher, or that the owner of the building or other structure may have failed to comply with any conditions imposed by the Director in granting the partial tax abatement, the Director will notify the owner of the building or other structure of his findings and provide the owner a reasonable opportunity to cure any noncompliance issues included in the Director’s findings. If the owner fails to cure the noncompliance issues within the time or terms provided by the Director, the Director shall issue a certificate of termination, including findings of fact, conclusions of law and order, declaring that the building or other structure has ceased to meet the standard upon which the certificate of eligibility was based, specifying the areas of noncompliance, and terminating the partial abatement. A copy of the certificate of termination shall be mailed to the:

- (a) Applicant;*
- (b) Chief of the Budget Division of the Department of Administration;*
- (c) Department of Taxation;*
- (d) County assessor;*
- (e) County treasurer; and*
- (f) Commission on Economic Development.*

5. A certificate of termination issued pursuant to this section shall be considered a final order of the Director for purposes of judicial review.

Sec. 23. *1. The owner of a building or other structure included in a construction project which was registered with the Office of Energy before June 15, 2007 for a partial tax abatement may submit an application to the Director pursuant to Section 18 of these proposed regulations upon providing proof to the Director that it qualifies as a Pre-2007 Applicant. Upon determining that the owner qualifies as a Pre-2007 applicant, the Director will expedite*

the processing of the application and apply all the provisions of these proposed regulations except:

(a) The Director will base his determination of eligibility on the Pre-2007 Green Building Rating System; and

(b) Any partial abatement of taxes will be based on the provisions of Section 15.5 of AB 621.

2. The owner of a building or other structure included in a construction project which was registered with the Office of Energy before June 15, 2007 for a partial tax abatement which does not qualify as a Pre-2007 applicant may submit an application to the Director pursuant to Section 18 of these proposed regulations. The Director will expedite the processing of the application.

Sec. 24. *The Director will set the duration of the partial abatement authorized by this chapter:*

1. In the case of LEED-NC, at ten years;

2. In the case of LEED-CS, at ? years;

3. In the case of LEED-EB, at ? years;

Sec. 25. NAC 701.400, 701.410, 701.420, 701.430, 701.440, 701.450, 701.460, 701.470, 701.480, and 701.490, LCB R170-06, LCB R025-06, and LCB T006-06 are hereby repealed.