

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

LCB File No. R116-07

August 30, 2007*

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-25, NRS 701A.100 (Section 2 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature) and 701A.110 (Section 3 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature), and Section 15.5 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature; §26, NRS 701.170.

A REGULATION relating to energy; adopting certain portions of the Leadership in Energy and Environmental Design Green Building Rating System for the purposes of determining eligibility for partial abatements from taxes imposed on real property; specifying the requirements for applying for a partial tax abatement; providing for the issuance by the Director of the Office of Energy of a certificate of eligibility for a partial tax abatement; and providing other matters properly relating thereto.

Section 1. Chapter 701A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 25, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 25, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicable LEED standard” means the version of the LEED standard in effect at the time an applicant registers a project with the U.S. Green Building Council.*

Sec. 4. *“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. 5. *“Director” means the Director of the Office of Energy within the Office of the Governor.*

Sec. 6. *“LEED” means Leadership in Energy and Environmental Design.*

Sec. 7. *“LEED accredited professional” means a person who holds a LEED Accredited Professional Certificate issued by the U.S. Green Building Council.*

Sec. 8. *“LEED-CS” means the LEED Green Building Rating System for Core and Shell Development.*

Sec. 9. *“LEED-EB” means the LEED Green Building Rating System for Existing Buildings, Upgrades, Operations and Maintenance.*

Sec. 10. *“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 17 of this regulation.*

Sec. 11. *“LEED-NC” means the LEED Green Building Rating System for New Construction & Major Renovations.*

Sec. 12. *“LEED standard” means all versions of a specific rating system within the LEED Green Building Rating System, including, without limitation, LEED-NC, LEED-EB and LEED-CS.*

Sec. 13. *“Partial tax abatement” means a partial abatement from the taxes imposed on real property by chapter 361 of NRS.*

Sec. 14. *“Pre-2007 applicant” means an applicant for a 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 provisions of former NAC 701.480; 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. 15. *“Pre-2007 Green Building Rating System” means the LEED Green Building Rating System adopted by the Director pursuant to the provisions of former NRS 701.217, as that rating system existed before June 15, 2007.*

Sec. 16. *“Significant change in the scope of the project” means:*

1. A change by more than 10 percent 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 the change will affect the amount of the partial tax abatement being sought; or

3. Any other change which will change the amount of the partial tax abatement being sought by more than 10 percent, except 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, will not be considered a significant change in the scope of the project until they are reasonably final and known to the owner.

Sec. 17. *1. Except as otherwise provided in section 18 of this regulation, 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 certain buildings or other structures for the purposes of determining eligibility for partial tax abatements.

3. A copy of the LEED Green Building Rating System may be obtained at no cost from the U.S. Green Building Council, 1800 Massachusetts Avenue, N.W., Suite 300, Washington, D.C. 20036, or on the Internet at <http://www.usgbc.org>.

Sec. 18. 1. *In accordance with the provisions of NRS 701A.100 (section 2 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature), the LEED Green Building Rating System adopted by the Director pursuant to section 17 of this regulation:*

(a) Does not include any LEED standard:

(1) That has not been included in the LEED Green Building Rating System for at least 2 years at the time the applicant provides proof to the Director pursuant to section 21 of this regulation that the building or other structure meets the equivalent of the silver level or higher of the LEED Green Building Rating System adopted by the Director; or

(2) For homes.

(b) Shall be deemed to require a building or other structure to obtain:

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

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

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

2. An applicant for a partial tax abatement must utilize an independent third-party commissioning firm to facilitate the fundamental building systems commissioning or existing building commissioning, as applicable, required by the LEED Green Building Rating System Energy and Atmosphere Prerequisite 1.

3. As used in this section, “home” has the meaning ascribed to it in NRS 701A.100 (section 2 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature).

Sec. 19. *1. A person who, with respect to a construction project involving a building or other structure, wishes to apply to the Director pursuant to NRS 701A.110 (section 3 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature) and this chapter for a partial tax abatement must, within 30 days after receiving local government approval of the construction project, submit an application to the Office of Energy on a form prescribed by the Director.*

2. The application must include:

(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 the design and construction or retrofit of the building or other structure;*
- (4) The actual or estimated date of the start of the construction or retrofit;*
- (5) The expected date of occupancy of the building or other structure;*
- (6) A copy of each 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 the acquisition, design or construction of the building or other structure, and associated land, is being provided by a governmental entity in this State;*
- (11) A list of all sources of funding for the acquisition, design or construction of the building or other structure, and associated land, provided by a governmental entity in this State; and*
- (12) A statement whether the owner of the building or other structure is or expects to receive any other abatement or exemption pursuant to NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS from the taxes imposed on real property by 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 is expected in the future to be exempt from the taxes imposed on real property by chapter 361 of NRS pursuant to any provision of law other than NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS;

(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;

(j) A copy of the local government approval of the construction project; and

(k) 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) In accordance with the provisions of NRS 701A.110 (section 3 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature), 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. The applicant must promptly amend the application if there is a significant change in the scope of the project.

5. 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 and has been certified by the U.S. Green Building Council.

6. As used in this section “funding for the acquisition, design or construction of the building or other structure, and associated land” includes, without limitation, equity, any form of indebtedness, any grant, any gift or anything else of value.

Sec. 20. *1. If an application for a partial tax 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 within 60 days after the occurrence of the change. If the applicant fails to amend the application in a timely manner, the Director may, without limitation:*

(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 tax abatement, 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. 21. 1. *Within 48 months after an application of a partial tax abatement is submitted to the Director pursuant to section 19 of this regulation, 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 LEED Green Building Rating System adopted by the Director; or

(b) An application to extend the period for providing such proof.

2. *If an applicant has not submitted the proof or an application for extension 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 the Director, after reviewing the proof submitted by the applicant pursuant to subsection 1, concludes that the building or other structure is eligible for a partial tax abatement, the Director will 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.*

4. The certificate of eligibility will include the duration of the partial tax abatement and the annual percentage of the partial tax abatement as provided in subsection 4 of NRS 701A.110 (section 3 of Assembly Bill No. 621 of the 74th Session of the Nevada Legislature), and identify each building or other structure to which the abatement should be applied. The Director may indicate that the abatement should be applied to an ancillary structure if the ancillary structure was specified in the application. The Director will include as part of the certificate of eligibility his findings of fact, conclusions of law and order explaining the reasons for issuing the certificate.

5. If the Director, after reviewing the proof submitted by the applicant pursuant to subsection 1, concludes that the building or other structure is not eligible for a partial tax abatement, the Director will 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 his findings of fact, conclusions of law and order explaining the reasons for issuing the certificate of ineligibility.*

6. If a certificate of eligibility is issued:

(a) Between July 1 and March 31, inclusive, of a fiscal year, the abatement becomes effective on July 1 of the immediately following fiscal year. The Director will not issue a certificate of eligibility on or before March 31 of a fiscal year with respect to an application that is not submitted to the Director on or before February 1 of that fiscal year.

(b) Between April 1 and June 30, inclusive, of a fiscal year, the abatement becomes effective on July 1 of the fiscal year next following the immediately following fiscal year.

7. A certificate of eligibility and certificate of ineligibility issued pursuant to this section are a final order of the Director for purposes of judicial review.

Sec. 22. The Director will accept as proof that a building or other structure for which a partial tax abatement is sought meets the equivalent of the silver level or higher of the LEED 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 level or higher;

2. Official documentation issued by the U.S. Green Building Council setting forth the number of LEED points obtained by the building or other structure; or

3. Any other information acceptable to the Director that in the judgment of the Director evidences compliance with the requirements of the LEED Green Building Rating System adopted by the Director.

Sec. 23. 1. *The Director may require an applicant who has been issued a certificate of eligibility pursuant to section 21 of this regulation to submit to the Director on an annual or other reasonable basis such information as the Director requires to determine whether the parcel on which the building or other structure is located is receiving another abatement or exemption pursuant to NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS from the taxes imposed on real property by chapter 361 of NRS.*

2. Within 60 days after the end of the second, fifth and eighth years after the owner of a building or other structure has been issued a partial tax abatement pursuant to section 21 of this regulation, the current owner shall submit to the Director written recertification from a third-party commissioning firm stating that the energy systems of the building or other structure 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 recertification letter should typically be the same firm that provided the original fundamental building systems commissioning or existing building commissioning 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 pursuant to NRS 361.045 to 361.159, inclusive, or chapter 701A of NRS from the taxes imposed on real property by chapter 361 of NRS, the Director will notify the owner of the building or other structure and the Department of Taxation in writing that the certificate of eligibility relating to the building or other structure has been suspended, and indicate 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 issuing the partial tax abatement, the Director will notify the owner of the building or other structure of the findings of the Director and provide the owner a reasonable opportunity to cure any noncompliance issues included in the findings. If the owner fails to cure the noncompliance issues within the time or in accordance with the terms provided by the Director, the Director will issue a certificate of termination, including his findings of fact, conclusions of law and order, which declares that the building or other structure has ceased to meet the standard upon which the certificate of eligibility was based, specifies the areas of noncompliance, and terminates the partial abatement. The Director shall provide a copy of the certificate of termination 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 is a final order of the Director for purposes of judicial review.

Sec. 24. 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 19 of this regulation*

upon providing proof to the Director that the owner 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 sections 2 to 25, inclusive, of this regulation, except that:

(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 Assembly Bill No. 621 of the 74th Session of the Nevada Legislature.

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 that does not qualify as a pre-2007 applicant may submit an application to the Director pursuant to section 19 of this regulation. The Director will expedite the processing of the application.

Sec. 25. *The Director will set the duration of the partial abatement authorized by this chapter:*

1. In the case of LEED-NC, at 10 years.

2. In the case of LEED-CS, at 7 years.

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

Sec. 26. NAC 701.400, 701.410, 701.420, 701.430, 701.440, 701.450, 701.460, 701.470, 701.480 and 701.490, and LCB File No. R025-06, LCB File No. R170-06 and LCB File No. T006-06 are hereby repealed.

TEXT OF REPEALED SECTIONS

701.400 Definitions. As used in NAC 701.400 to 701.490, inclusive, unless the context otherwise requires, the words and terms defined in NAC 701.410 to 701.450, inclusive, have the meanings ascribed to them in those sections.

701.410 “LEED” defined. “LEED” means Leadership in Energy and Environmental Design.

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

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

701.440 “LEED Green Building Rating System” defined. “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 by reference pursuant to NAC 701.460.

701.450 “LEED-NC” defined. “LEED-NC” means the LEED Green Building Rating System for New Construction & Major Renovations.

701.460 LEED Green Building Rating System: Adoption of certain portions by reference; use; effect of updates.

1. Pursuant to paragraph (b) of subsection 1 of NRS 701.217, the Director hereby adopts by reference the following portions of the LEED Green Building Rating System:

- (a) Version 2 of LEED-EB; and
- (b) Versions 2.1 and 2.2 of LEED-NC.

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. If the U.S. Green Building Council adopts an updated version of the LEED Green Building Rating System, the updated version shall be deemed to have been determined by the Director to be appropriate for use in this State, effective 10 days after the date on which the updated version is published, unless the Director determines that the updated version is not appropriate for use in this State. If the Director determines that the updated version is not appropriate for use in this State, the Director will post a notice of disapproval at the largest public library in each county, the State Library and Archives, the Grant Sawyer Office Building located at 555 East Washington Avenue, Las Vegas, Nevada, and the Office of Energy.

4. If the Director determines that an updated version of the LEED Green Building Rating System is not appropriate for use in this State:

(a) The Director will adopt an alternative Green Building Rating System and certification process; and

(b) The version of the LEED Green Building Rating System that was most recently adopted by the Director by regulation or deemed appropriate for use in this State pursuant to this section

will continue in effect until the alternative rating system and certification process adopted by the Director become effective.

5. 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>.

701.470 Annual review and evaluation of Green Building Rating Systems. The Director will review, evaluate and consider new LEED designations and updates and other Green Building Rating Systems at least once each year.

701.480 Registration of construction project to obtain partial abatement of property tax and partial sales tax exemption.

1. A person who, with respect to a construction project involving a building or other structure, wishes to apply to the Commission on Economic Development pursuant to NRS 361.0775, and any regulations adopted pursuant thereto, for a partial abatement from the tax imposed on real property by chapter 361 of NRS, or wishes to seek authorization from the Department of Taxation for a partial sales tax exemption on products or materials used in the construction project in accordance with the former provisions of NRS 374.307, as amended by section 7 of chapter 2, Statutes of Nevada 2005, 22nd Special Session, at page 71, must register the project with the Office of Energy before construction is begun unless the Director provides written approval for a later registration.

2. To register a project with the Office of Energy, the registrant must provide:

(a) The name, address and telephone number of the registrant;

(b) The name and address of the owner of the affected real property, if the registrant 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) The applicable LEED Green Building Rating System and version on which the certification of the building or other structure will be based;
 - (f) The level and number of points of the applicable LEED Green Building Rating System at which the registrant expects the building or other structure to be certified;
 - (g) The expected date of occupancy of the building or other structure;
 - (h) The gross square footage of the building or other structure;
 - (i) The proposed use of the building or other structure;
 - (j) Proof that the project has been registered with the U.S. Green Building Council;
 - (k) If applicable, the name and contact information of the LEED accredited professional assigned to the design team for the project;
 - (l) If the registrant is seeking authorization from the Department of Taxation for a partial sales tax exemption on products or materials used in the construction project in accordance with the former provisions of NRS 374.307, as amended by section 7 of chapter 2, Statutes of Nevada 2005, 22nd Special Session, at page 71, an evaluation from a LEED accredited professional that includes:
 - (1) A statement that he has reviewed the plans, design documentation and specifications for the project; and
 - (2) His opinion as to the probability that the building or other structure will be certified at the silver level or higher of the applicable LEED Green Building Rating System; and
 - (m) Any other information requested by the Director.
3. Upon the receipt of all information required by this section, the Director will:

- (a) Notify the registrant in writing acknowledging that the registration is complete; and
- (b) Forward a copy of the registration and the written notification provided to the registrant

to:

- (1) The Executive Director of the Department of Taxation;
- (2) The Executive Director of the Commission on Economic Development; and
- (3) The treasurer of the county in which the real property is located.

701.490 Notification of certification of structure at silver level or higher; issuance of letter of verification.

1. Upon receipt of certification from the U.S. Green Building Council, the registrant shall notify the Director whether the building or other structure has been certified at the silver level or higher of the applicable LEED Green Building Rating System and, if so, provide a copy of the certification from the U.S. Green Building Council, including the number of LEED points earned.

2. Upon receipt of verification that the building or other structure has been certified at the silver level or higher of the applicable LEED Green Building Rating System, the Director will issue a letter of verification which states that the real property for which the real property tax abatement or sales tax exemption is sought has a building or other structure that meets or exceeds the certification requirements for the abatement as set forth in NRS 361.0775, and any regulations adopted pursuant thereto, or for the exemption in accordance with the former provisions of NRS 374.307, as amended by section 7 of chapter 2, Statutes of Nevada 2005, 22nd Special Session, at page 71, and which sets forth the number of LEED points earned. The Director will forward a copy of the letter to:

- (a) The registrant;

- (b) The Executive Director of the Department of Taxation;
- (c) The Executive Director of the Commission on Economic Development; and
- (d) The treasurer of the county in which the real property is located.