

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

**Seventy-Fifth Session
February 23, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 1:40 p.m. on Monday, February 23, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/75th2009/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).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chair
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
Assemblywoman Barbara E. Buckley
Assemblyman Chad Christensen
Assemblywoman Heidi S. Gansert
Assemblyman Ed A. Goedhart
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblyman Mark A. Manendo (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Patricia Blackburn, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Wendy Simons, representing Board of Examiners for Long Term Care
Administrators, Reno, Nevada
RoseMary Womack, Private Citizen, Carson City, Nevada

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

Chairman Conklin:

We will open the hearing on Assembly Bill 176.

Assembly Bill 176: Revises provisions relating to administrators of facilities for long-term care. (BDR 54-173)

Assemblywoman Kathy McClain, Clark County Assembly District No. 15:

With me today are RoseMary Womack, one of our former colleagues, and Wendy Simons, who is with the Board of Examiners for Long Term Care Administrators. Ms. Simons is a licensed administrator as well as a consultant to the Board. RoseMary Womack is also a licensed long-term care administrator, so they have a wealth of knowledge on the need for this bill.

Wendy Simons, representing Board of Examiners for Long Term Care Administrators:

[Spoke from prepared testimony ([Exhibit C](#)).]

The Board of Examiners for Long Term Care Administrators (BELTCA) expanded the criteria for licensure to include what is now called an Administrator in Training Program where licensees work 40 hours with a mentor to assure future compliance. [Continued with prepared testimony.]

People do not realize the severity of failing to act in accordance with the *Nevada Revised Statutes* (NRS) and the *Nevada Administrative Code* (NAC) and of their obligations as a licensed administrator. The increase in the amount of the fine would serve as a deterrent for people not acting according to the requirements stipulated in the NRS and the NAC.

A number of licensees have recognized that they should not be doing what they are doing. Rather than forcing a punitive phase upon them, allowing them the opportunity to voluntarily surrender their license would save additional costs to BELTCA and also save embarrassment to those particular providers who did not measure up. [Continued with prepared testimony.]

In conclusion, I want to thank Assemblywoman McClain for bringing the amendments forward ([Exhibit D](#)). I would appreciate your consideration of these amendments.

Chairman Conklin:

Ms. Simons, I know the Committee will have many questions so please stay close by. Ms. Womack, would you like to testify before we start our questioning of Ms. Simons?

RoseMary Womack, Private Citizen, Carson City, Nevada:

I am a longtime advocate for seniors and have worked with them for 18 years in southern Nevada: for the Alzheimer's Association and the Salvation Army Day Care Center in Henderson, among others. Now that I have relocated to northern Nevada, the concern for seniors is still my focus. I hold an administrator's license for long-term care. When in need of personal care and assistance, seniors should always be given their dignity and respect along with good care. Many times they are not, and they are too afraid of repercussions so they neglect to express their needs or their abuse or their lack of care.

When the Bureau of Health Care Quality and Compliance (BHCQC) inspects a facility and there is evidence of neglect, they report the administrator to BELTCA. The Board needs the ability to subpoena the records so that proper action can be taken when they find that there is a deficiency or there has been neglect or abuse. Increasing the fine from \$5,000 to \$10,000 per incident will help deter facilities from continuing practices that are construed as violations of NRS and considered unsafe practices.

I urge you to vote for A.B. 176 with the suggested amendments so that we can strengthen our laws and elevate our standards so that seniors will be assured that as legislators, we are taking steps to insure they will be given the kind of care they so deserve.

Chairman Conklin:

I will start the line of questioning. With respect to the proposed amendment, your request on line 13 reads as if a hearing may be optional before you decide to fine. Is that your intention?

Wendy Simons:

The current language of NRS says the Board "may, after notice and a hearing..." so the stipulation for a hearing already exists. What has occurred is a number of the participants have asked to waive the hearing but have not been allowed to do so because the law currently says they have to appear before a hearing. That is the reason for the insertion of "or."

Chairman Conklin:

We might have to find another way to deal with that problem. I am not sure you can waive that right.

Assemblywoman McClain:

It might be possible to add some language to clarify this.

Assemblywoman Kirkpatrick:

I deal with these situations on a daily basis. I have about 41 residential homes within my district. We are always stonewalled when it comes to the administrators. I do not understand what the administrators do. I have six group homes in my district that have the same administrator. When there are issues, they do not respond. If we are increasing the fine and allowing a waiver, what is their responsibility? Since we could not get a response from them when we were assessing a \$5,000 fine, what difference would a \$10,000 fine make? I do not understand why we want to double the fine and allow them not to show up for a hearing.

Wendy Simons:

This has been one of the frustrations we have had. I think if we were to negotiate and give something up, the "or" recommendation would be easy to surrender for the sake of sustaining the increased fine. I have had the pleasure of attending one or two of the Board of Examiners meetings, but have never had to go before the Board. From my observations during those meetings, there seems to be a complete disengagement from the seriousness of this situation. There are several facilities with the same administrator.

I have been doing some training in Nevada on meeting the criteria and the parameters of the grading system. I am sensing from some of the providers a total misunderstanding of the obligations of licensure and regulation. In the workshops, however, there is an interest from them in compliance.

There are a number of administrators who are comfortable just hanging their license "for hire" on a building, and they never show up in the building. When things go wrong, the BHCQC has to regulate and shut down the building, and then the administrator gets reported to BELTCA. In the next year there will be an increased partnership between BHCQC and BELTCA to increase the speed of getting these administrators in compliance. I have put providers on alert to the fact that there may be an increase in the fine, and it has been an eye-opener for some providers. If there is an increase in fines, I feel certain it will be a wake-up call for them.

Assemblywoman Kirkpatrick:

When are the administrators placed on probation? I have never seen one receive a suspended license. When I called about 18 months ago, I was told that the policy is to make sure that the facility is a good neighbor. That does not help the senior citizens. I would like to see some examples. I feel we are not doing enough. I have one group home in my district that had 32 violations and nothing was done. When are the administrators held accountable?

Wendy Simons:

I do not have those numbers. Administrators have lost their licenses and have been fined.

Keep in mind, there are two components to this, the BELTCA and the BHCQC. This has been one of the best years we have had with the grading system. We currently have five or six "A" facilities, and the rest have been "B," "C," and "D." The facilities are mandated to reapply and come back into compliance and pay a fine for bad practices. I am anticipating improvement.

The BELTCA meets quarterly. It is a volunteer body appointed by the Governor, so the biggest challenge is having only quarterly meetings, versus monthly meetings where they could really get on top of some of these issues. As a provider in the industry, I will personally communicate with you and keep you advised as to what is happening in the future.

Assemblyman Horne:

I have one other question. What is the rationale in going from ten-days to five-days notice?

Wendy Simons:

The reason has gone away. At the time that this bill was crafted, the reason was to speed up the notice of action. However, the amendment requests we adhere to "open meeting law," inserting that into the language versus the ten to five days.

Assemblyman Horne:

Okay.

Chairman Conklin:

On line 17 you are asking to allow a licensee to voluntarily surrender their license. Along the lines of Mrs. Kirkpatrick's concerns, on page 3, line 1, it expressly provides the Board the authority to continue to investigate or take disciplinary action or any other action regardless of the fact that someone had surrendered their license. I want to make certain that allowing someone the right, in statute, to surrender their license does not alleviate their responsibility to the Board or eliminate the actions the Board can take for violations.

Wendy Simons:

Correct.

Chairman Conklin:

That is not the intent either, is it?

Wendy Simons:

Correct.

Assemblywoman Gansert:

How many fines have been given out in the last year or so?

Wendy Simons:

I do not have the exact number.

Assemblywoman Gansert:

I just want to understand why you feel the need for an increase. Do you use it consistently?

Wendy Simons:

Yes, it has been used consistently. One case I am aware of was a provider who was brought before the Board and had counsel to represent her. She did not understand even the logistics of the hearing before the Board. When she was asked if she was waiving her rights, she did not even understand that.

Ultimately, she was fined and requested to surrender her license. I believe her fine in that instance was \$5,000.

Assemblywoman Gansert:

I just want to know if that is frequent since you feel the need to increase the fine.

Wendy Simons:

To my knowledge, it has not been excessively frequent. I do not want to give you a false number.

Chairman Conklin:

Could you provide those numbers to us?

Wendy Simons:

Yes.

Assemblyman Horne:

Regarding shortening the time from ten to five days in your amendment, you said you would insert the "open meeting law" statute. But, perhaps Legal should be answering this. The open meeting law deals with providing notice to the public, but it might not necessarily be sufficient to provide notice to those people who may be at risk of losing their license. That may be two different things.

Daniel Yu, Committee Counsel:

I believe that is a policy decision. Whether a five-days notice is sufficient time for an applicant to defend any accusations made against him is unclear. There are various statutory schemes set up throughout NRS that would provide for different time periods. There are some that require ten days, fifteen days, five days, et cetera. Whether that is sufficient time is really a policy decision.

Assemblywoman Kirkpatrick:

What happens if you have an administrator who represents five different group homes, and four of his group homes are in violation? Would the fine be \$10,000 for each facility, and what happens on their second offense? I want to verify that the fine is for each facility.

There are some of the same people running several facilities. There is no contact information or ability to get to them. The administrators move people from one home to the next every time there are violations.

I do not want them to be able to waive their right to show up at a hearing; that could be the only time to know who that person is.

Wendy Simons:

That has been the intent of the Board, to bring some accountability to the process. I do not believe there has been the commitment by providers to the administrators' responsibilities.

There is an extensive effort from BELTCA to craft regulatory changes, after this session, that will address absentee administrators. Regulations are forthcoming.

Assemblywoman Kirkpatrick:

I hope you would take into consideration the fact that several of these administrators are not Nevada residents.

Wendy Simons:

I promise you that will happen.

Assemblywoman McClain:

For Mrs. Kirkpatrick's information, I have another bill coming that will differentiate between group homes, nursing homes, residential care homes, et cetera.

Assemblyman Settlemeyer:

My only suggestion would be the possible concept of changing the wording to "five working days" so that you are in compliance with the open meeting law. The way this bill reads, you could tell someone they could get a fine in five days, but you would not have the authority to make it an action item because it is not five working days.

Wendy Simons:

That is a good point. If we state "in accordance with the open meeting law," it would not be clear; so I think "five working days" would be better.

Chairman Conklin:

I would remind the Committee that the issue is notice so someone has time to prepare a proper defense for themselves before the hearing.

Wendy Simons:

In my observation, the process is fair. It can take close to nine months by the time licensees go through different hearings. BELTCA recognizes the challenges they are facing. They do not want to be unnecessarily punitive, but they do want to encourage better behavior.

The real estate statutes allow for the surrender of licenses without a hearing process, and that is one of the reasons we put it in this bill.

Chairman Conklin:

Are there any additional questions? I see none. Is there anyone wishing to testify in support of A.B. 176? I see none. Is there anyone wishing to testify in opposition to this bill? I see none. I will close the hearing on A.B. 176.

[The meeting was adjourned at 2:20 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Blackburn
Committee Secretary

APPROVED BY:

Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 23, 2009

Time of Meeting: 1:40 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B.176	C	Wendy Simons	Prepared testimony
A.B.176	D	Wendy Simons	Proposed amendments