

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS

Seventy-Fifth Session
May 21, 2009

The Committee on Ways and Means was called to order by Chair Morse Arberry Jr. at 9 a.m. on Thursday, May 21, 2009, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, 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 Morse Arberry Jr., Chair
Assemblywoman Sheila Leslie, Vice Chair
Assemblywoman Barbara E. Buckley
Assemblyman Marcus Conklin
Assemblyman Mo Denis
Assemblywoman Heidi S. Gansert
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Joseph (Joe) P. Hardy
Assemblyman Joseph M. Hogan
Assemblywoman Ellen Koivisto
Assemblywoman Kathy McClain
Assemblyman John Ocegüera
Assemblywoman Debbie Smith

STAFF MEMBERS PRESENT:

Mark Stevens, Assembly Fiscal Analyst
Tracy Raxter, Principal Deputy Fiscal Analyst
Carol Thomsen, Committee Secretary
Vickie Kieffer, Committee Assistant

Chair Arberry stated that the Committee would hear testimony regarding Assembly Bill (A.B.) 561.

Assembly Bill 561: Eliminates the Consumer Affairs Division of the Department of Business and Industry and transfers certain duties and powers of the Division. (BDR 18-1201)

Dianne Cornwall, Director, Department of Business and Industry, introduced herself to the Committee. Ms. Cornwall explained that the Department supported A.B. 561 as it was currently written. However, the language of the bill was not the same as the original draft submitted by the Department regarding the closure of the Consumer Affairs Division (CAD). Ms. Cornwall stated that she had been shocked by the language in the recently received draft of the bill, and she had invited staff of the Legislative Counsel Bureau (LCB) and

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other interested parties to participate in a conference call. She stated that she had also invited Keith Munro, First Assistant Attorney General, Attorney General's (AG's) Office, along with a representative from the Department of Motor Vehicles (DMV) to participate in the conference call.

According to Ms. Cornwall, the conference call was scheduled for Monday, May 18, 2009, at which time a representative from the AG's Office was not available, but input was received from other interested parties. Ms. Cornwall stated that Ms. Reedy, who had actually drafted the first piece of legislation for the Department, would explain the language originally submitted versus the current language of the bill.

Vice Chair Leslie understood that the language of the bill had changed somewhat from its original version, but the Committee was only interested in discussing A.B. 561 as currently written.

Robin Reedy, Deputy Director, Department of Business and Industry, stated that because of the funding situation facing the state the Department was instructed to research the closure of the Consumer Affairs Division (CAD). In January 2009, Ms. Reedy began researching the best method to refer consumer calls once handled by CAD and the best way to eliminate the Division. Ms. Reedy stated that during the process she approached the AG's Office and inquired whether it would be willing to assume some of the duties handled by CAD through its Bureau of Consumer Protection. However, the AG's Office indicated that it could not assume any of the duties of CAD. Ms. Reedy said the Department then formulated a draft of the bill that basically eliminated the language regarding the Consumer Affairs Division (CAD) from statute.

Ms. Reedy stated that the Department recently received a draft of the bill that actually transferred a majority of the work handled by CAD to the AG's Office. She reported that the Department had "turned over every rock" to help mitigate the closure of CAD. A large portion of the complaints received by CAD were about the regulation of garages, garagemen, and body shops, and responsibility for those complaints would be transferred to the Department of Motor Vehicles (DMV). Ms. Reedy also noted that the bill would transfer the complaints regarding regulated industries to the AG's Office, which was the area of controversy.

Ms. Reedy said that agencies were blaming each other regarding the language of the bill which stipulated that complaints regarding regulated industries would be transferred to the AG's Office. She stated, for the record, that the Department had not proposed language in the bill that would send complaints to the AG's Office.

Vice Chair Leslie recognized Assemblywoman Buckley.

Assemblywoman Buckley informed Ms. Reedy that it did not matter whether or not there was controversy over the bill. She explained that the budget for the Department of Business and Industry had been closed, so for better or worse, CAD would be eliminated. Assemblywoman Buckley noted that all parties might not be satisfied with the language of the bill, but the Committee was considering the bill today as written.

Ms. Reedy emphasized that the Department would support the bill as written.

Vice Chair Leslie asked that testimony be confined to the bill that was currently before the Committee for consideration. She noted that the Department had

voiced support for the bill as written with no apparent need for amendment. Ms. Cornwall replied that the Department supported the bill.

Vice Chair Leslie asked about the contents of the bill. She noted that the bill would eliminate the Commissioner of Consumer Affairs position, with some duties being transferred to the DMV. Ms. Cornwall stated that complaints regarding vehicles, such as those involving garages and garagemen, would be transferred to the DMV and loan modification issues would be transferred to the Department of Business and Industry, Mortgage Lending Division. Ms. Cornwall explained that two positions from CAD would be retained in the Director's Office for the first year of the biennium to help facilitate referrals of calls to the proper agencies to address consumer complaints.

Vice Chair Leslie again asked whether the Department wished to amend the bill, and Ms. Cornwall stated that the Department would offer no amendments to the bill.

Assemblywoman Buckley reported that she had introduced a bill during the 2007 Legislature to transfer consumer complaints regarding vehicles to the DMV, but support for the bill by the Governor's Office was withdrawn at the end of session and the bill ultimately failed. Assemblywoman Buckley asked whether the Governor's Office supported A.B. 561, which again recommended transfer of consumer complaints to the DMV.

Ms. Cornwall replied that the proposal to eliminate CAD was included in The Executive Budget.

Vice Chair Leslie recognized Assemblyman Denis.

Assemblyman Denis said that during discussion of the Department's budget by the Joint Subcommittee on General Government and Accountability, the decision was made to eliminate the budget for CAD; however, some funding would remain in place so the Department could restore the Division in the future through the bare-bones budget that would remain. Assemblyman Denis asked whether the bill would completely eliminate the CAD budget to the point where the Department would have to start over or whether some funding would remain to allow the Department to restore CAD should funding become available.

Ms. Reedy explained that the budget for CAD actually remained intact, and encompassed the Ombudsman for Consumer Affairs position and two staff positions to answer consumer calls and refer complaints to the proper agencies. However, it was truly a bare-bones budget that included only those three positions. Assemblyman Denis said it had been his understanding that some funding would remain, and he thanked Ms. Reedy for her explanation.

Assemblywoman Buckley commented that the Joint Subcommittee voted to retain two positions, and she wondered whether CAD should be eliminated in statute, or whether it should remain in statute with the bare-bones funding, as closed by the Joint Subcommittee.

Assemblyman Denis said the intent of the Joint Subcommittee was to retain some funding in the budget for CAD so the Division could be restored should funding become available in the future. Assemblywoman Buckley said that would leave a skeleton of CAD so that future legislators could determine whether or not to restore the Division. Assemblywoman Buckley believed that was a very good point.

Vice Chair Leslie commented that sections 3 and 4 of the bill addressed the elimination of the Consumer Affairs Division (CAD); she noted that the position of commissioner had been eliminated through the budget closing.

Ms. Cornwall said the Department did not want to create confusion for consumers. She understood the action contemplated by the Committee to retain a skeleton of the Division so that future legislators could revisit the issue for possible restoration. Personally, said Ms. Cornwall, she had no issue with such action as long as it did not confuse consumers. She pointed out that consumers would have no place to contact, other than the Director's Office, for referral to the appropriate entity for complaints.

Vice Chair Leslie noted that consumers would be calling the skeleton crew that would remain under CAD funding. Ms. Cornwall replied that was correct, but it would no longer be under CAD, but rather through the Director's Office.

Ms. Reedy reminded the Committee that the two positions would only remain for the first year of the 2009-11 biennium and would be eliminated after that year. She believed there might be some confusion on the part of consumers.

Vice Chair Leslie said Fiscal Analysis Division staff advised that the funding for the two positions was actually available for both years of the biennium, although there was a provision to review the funding after the first year to ascertain whether or not to continue funding for the second year.

Vice Chair Leslie believed that because consumers were accustomed to calling CAD regarding complaints, the two remaining positions would refer the calls to the appropriate entity. She wondered why Ms. Cornwall believed that consumers would be confused.

Ms. Cornwall explained that the Department did not want to confuse consumers and was willing to take whatever action necessary. While the Department could not assume additional duties, Ms. Cornwall believed that retaining the name of the Division would be a good starting point for consumers.

Vice Chair Leslie noted that the two positions could remain on staff during the second year of the biennium to refer calls. Assemblyman Denis explained that the funding for the second year of the biennium would be available through the Interim Finance Committee (IFC).

Mark Stevens, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau (LCB), advised that the Joint Subcommittee voted to close the Department's budget including funding for the two positions for CAD. Those positions would receive and transfer calls to the appropriate entities for resolution of complaints. Mr. Stevens said at the end of the first fiscal year of the biennium, the IFC would review the call activity and determine whether additional funding would be needed to continue either one or both positions or whether additional action would be necessary.

Ms. Cornwall suspected that as consumers called the Director's Office or CAD and were unable to receive direct help, the number of calls would begin to decrease. The Department had committed to approaching the IFC to report the statistics regarding consumer calls in the first year of the biennium.

Vice Chair Leslie asked whether there was further testimony to come before the Committee regarding A.B. 561.

Troy Dillard, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles (DMV), stated that sections 5 through 35 of the bill addressed the transfer of the responsibilities regarding vehicles currently handled by CAD to the DMV. Mr. Dillard stated he was present to testify in support of those sections of the bill. Also, a budget amendment was included in the budget closing for the DMV that transferred one existing position from CAD to the budget for the DMV to continue service to consumers with relation to the garage industry.

Mr. Dillard pointed out that there was a companion piece of legislation, A.B. 482, which addressed the same issue and was currently under consideration by the Senate Committee on Transportation. Mr. Dillard noted that A.B. 561 had not been introduced when A.B. 482 was heard, but the DMV had apprised the Senate Committee on Transportation of the bill draft request (BDR) number for the companion legislation (A.B. 561).

According to Mr. Dillard, the difference between the two bills was the budget amendment that transferred the position from CAD to the DMV effective July 1, 2009. He noted that the effective date of the position transfer in A.B. 482 was October 1, 2009. Mr. Dillard said the DMV believed it was important that the position transfer to DMV effective July 1, 2009, to continue the uninterrupted service for consumers regarding the garage industry.

Vice Chair Leslie asked which section of A.B. 561 addressed the transfer of the position to the DMV. Mr. Dillard indicated that the transfer was included in the budget amendment, which had been passed by both houses of the Legislature. Vice Chair Leslie asked about the relationship between the budget amendment and A.B. 561. Mr. Dillard explained that the bill contained the policy portion to change the wording of Chapter 597 of the *Nevada Revised Statutes* (NRS) to transfer responsibility for consumer complaints regarding vehicles from CAD to the DMV.

Vice Chair Leslie asked whether the DMV had any proposed amendments for A.B. 561. Mr. Dillard stated that sections 3 through 35 would affect the DMV, and the DMV supported passage of the bill as currently written.

Vice Chair Leslie recognized Assemblywoman Buckley.

Assemblywoman Buckley asked whether there would be problems regarding the 22 percent cap because of the bill. Mr. Dillard said it was his understanding that the budget amendment was taken into consideration when the budget was closed, and it would fall under the 22 percent cap with the remainder of the DMV's budget.

Vice Chair Leslie asked whether there was further testimony to come before the Committee regarding A.B. 561.

Keith Munro, First Assistant Attorney General, Attorney General's (AG's) Office, stated that the AG's Office would oppose the bill after receipt of the draft on May 20, 2009. He indicated that the draft fundamentally changed what the AG's Office believed was the purpose of the bill.

Vice Chair Leslie asked whether the draft referred to by Mr. Munro was the same as the bill currently under consideration by the Committee. Mr. Munro stated that the AG's Office had received the draft on May 20, 2009. Vice Chair Leslie said her question was whether the draft received by the AG's Office was the same as the bill currently under consideration by the Committee, and Mr. Munro stated it was the same.

Mr. Munro indicated that the AG's Office had no objections to the portion of the bill that referred to the DMV. However, the AG's Office believed that the services provided by CAD were important to the state. Each year approximately 20,000 complaints were filed with CAD, and the Division handled almost \$20 million in bonds from registered agencies. Mr. Munro noted that CAD also accepted registration fees, held administrative hearings, investigated cases, and mediated complaints for consumers. Mr. Munro said the AG's Office would support not eliminating CAD from the NRS because the complaints and problems faced by citizens would be ongoing, and those persons would continue to need assistance. Mr. Munro said the request of the AG's Office would be to retain CAD in the NRS.

The question, said Mr. Munro, was what would be done with the work typically handled by CAD. The best answer would be to retain the commissioner position in the CAD budget and the AG's Office could work with the commissioner to distribute the duties.

Vice Chair Leslie stated that, unfortunately, the budget for the Department of Business and Industry and CAD had been closed, and retaining the commissioner position was not an option at the present time.

Mr. Munro said the AG's Office would propose an amendment to the bill ([Exhibit C](#)) which would restore "Director" of the "Department of Business and Industry" to the language of the bill.

Assemblywoman Buckley stated that the Joint Subcommittee on General Government and Accountability had closed the budget for the Department of Business and Industry approximately ten days ago and eliminated the commissioner position, and the time for testimony regarding that position had passed. She explained that the Committee could not change the budget closing because the Appropriations Act was in the process of being drafted.

Mr. Munro explained that the AG's Office had received a copy of A.B. 561 on May 20, 2009, and the AG's Office had assumed that the Director's Office of the Department of Business and Industry would assume many of the duties formerly handled by CAD. However, the language of the bill stipulated that the duties would be handled by the AG's Office. The problem was that the AG's Office was not a regulatory agency, and staff did not have that expertise. Mr. Munro stated that the AG's Office did not have rule-making authority or hearing officers on staff. It would appear that the proposed two positions within the existing framework of CAD should be handled through the Director's Office of the Department of Business and Industry.

Assemblywoman Buckley acknowledged that Mr. Munro made a good point. Mr. Munro said the AG's Office would work with the Department and would accept the statement made by Dianne Cornwall, Director, Department of Business and Industry, that the current language of the bill was not as intended by the Department. He stated that it would be problematic for the AG's Office to undertake the regulatory functions while also providing legal advice regarding regulations.

Assemblywoman Buckley asked Mr. Munro to walk the Committee through the proposed amendment, with specificity regarding how the duties should be delineated.

Mr. Munro offered the following overview of the proposed amendment ([Exhibit C](#)):

- Section 37: Restore Director to read, "Director or Attorney General."
- Section 37, subsection 4: Restore "Director or Attorney General."
- Section 37, subsection 5, paragraphs (a) and (b): Restore "Director or Attorney General."

Vice Chair Leslie believed that the Committee had gotten the gist of the amendments requested by the AG's Office. Mr. Munro said the exhibit depicted the changes requested by the AG's Office.

Assemblyman Denis indicated that the Joint Subcommittee had discussed retention of a bare-bones budget for CAD, and the intent was not to transfer additional duties to the AG's Office. Assemblyman Denis said the Subcommittee's understanding was that the Director's Office of the Department would assume the duties formerly handled by CAD.

Vice Chair Leslie asked whether the remaining proposed amendments depicted in [Exhibit C](#) followed the same format. She asked about the proposed language in section 51.

Mr. Munro stated that the AG's Office believed that the proposed amendment included changes that should be made to existing provisions. Vice Chair Leslie noted that the proposal was to delete subsection 3 of NRS 598.475. Mr. Munro stated that Mr. Figueroa would address that amendment.

Ernest Figueroa, Chief Deputy Attorney General, Attorney General's Office, Consumer Protection Bureau, explained that subsection 3 of NRS 598.475 referred to certain consumer disclosures that had to be printed on statements that were given to consumers who received the services of a tour broker. The statements provided that consumers could file complaints with CAD, but because CAD would be eliminated, the AG's Office believed that language was no longer necessary.

Assemblyman Denis stated that as the Joint Subcommittee discussed the budget for the Department and the elimination of CAD, it noted that there were certain services that were regulated by CAD that would no longer be regulated. The tour business was one of those service areas that would be eliminated from regulation. Assemblyman Denis believed there were other service areas that would also cease to be regulated.

Vice Chair Leslie asked for clarification regarding the proposed amendment that recommended the elimination of NRS 598C.180 in section 62 of [A.B. 561](#).

Mr. Figueroa explained that part of CAD's duties was to require the registration of certain telemarketers, but because that registration was no longer required, the language should also be eliminated.

Assemblyman Denis commented that registration of telemarketers had also been discussed by the Subcommittee and was an area that would no longer be regulated.

Vice Chair Leslie referenced section 63 and asked for clarification of the proposed amendment.

Mr. Figueroa stated that because of the deregulation of telemarketers, it was his belief that the definition of "salesman" was redundant with the definition of "seller," and as a matter of clarity, the AG's Office proposed removal of the definition of "salesman," while leaving the telemarketing aspect of statute intact.

Vice Chair Leslie wondered whether "salesman" would be deleted throughout section 63. Mr. Figueroa replied that language in bill that referenced a "salesman" would be eliminated. He noted that there were many references to "salesman" throughout Chapter 599B of the NRS.

Vice Chair Leslie stated that the proposed amendment would delete subsection 7 of section 63 entirely, and Mr. Figueroa stated that was correct.

Assemblyman Hardy said he was looking at subsection 8 of section 63 of the bill which read "one or more salesmen," and he asked whether all language pertaining to "salesman" or "salesmen" would be deleted. Mr. Figueroa explained that the definition of a "salesman" in subsection 7 of section 63 of the bill would be deleted. Assemblyman Hardy asked whether that included lines 3 through 14 of the bill, or subsection 7, in its entirety. Mr. Figueroa stated that was correct.

Assemblyman Hardy noted that the term "salesmen" was also included in the language of subsection 8 of section 63 of the bill, and he wondered how "salesman" would be defined in that subsection. Mr. Figueroa said that perhaps the definition of "salesman" should remain intact.

Vice Chair Leslie said the Committee would continue to review the amendment to make sure it understood the intent of the AG's proposal, and the Committee would assign Assemblyman Denis to work with the AG's Office regarding the language of the amendment. She noted that one issue for review would be the elimination of subsection 7 of section 63, which defined "salesman."

Vice Chair Leslie noted that the proposed amendment suggested the deletion of subsection 2 of NRS 599B.025 in section 64 of the bill. Mr. Figueroa pointed out that section 64 also dealt with the definition of "salesman" and would require additional review.

Vice Chair Leslie asked Assemblyman Denis to meet with representatives from the AG's Office and the Department of Business and Industry to review the language of the bill and the proposed amendment and report back to the Committee regarding suggested language for the bill. Assemblyman Denis asked whether the language regarding the DMV portion of the bill was also in question. Mr. Munro stated that the AG's Office had no problems with the language of the bill that pertained to the DMV.

Vice Chair Leslie asked whether there were further questions or testimony to come before the Committee regarding A.B. 561, and there being none, Vice Chair Leslie closed the hearing.

Vice Chair Leslie opened discussion regarding Senate Bill (S.B.) 416 (R1).

Senate Bill 416 (1st Reprint): Suspending temporarily the administration of norm-referenced examinations in public schools. (BDR S-1216)

Assemblywoman Smith stated that there was a proposed amendment to the bill, ([Exhibit D](#)). She indicated that the bill had been heard previously by the Committee and would suspend the norm-referenced examinations, which was included in The Executive Budget. At the earlier hearing, the Committee had heard a presentation from the Nevada State Education Association (NSEA) regarding an amendment to extend a moratorium on school districts adding new tests other than those required by state or federal law, and to include a sunset provision.

Assemblywoman Smith believed that because of the financial condition of the state, not adding an additional classroom requirement would be economically beneficial. She noted that similar action had been taken in the past. Assemblywoman Smith said the amendment also stipulated that the provisions of the bill would sunset on June 30, 2011, and any test that had been adopted by the school district prior to July 1, 2009, would meet the provisions of the amendment.

Vice Chair Leslie called for a motion.

ASSEMBLYWOMAN SMITH MOVED THAT THE COMMITTEE
AMEND AND DO PASS S.B. 416 (R1) AS AMENDED.

ASSEMBLYMAN DENIS SECONDED THE MOTION.

THE MOTION PASSED. (Chair Arberry was not present for the
vote.)

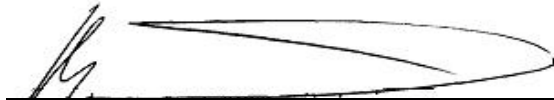
Vice Chair Leslie declared the Committee in recess at the call of the Chair.

[The meeting of May 21, 2009, was not reconvened because of time constraints, and was adjourned at 8:15 a.m. on May 22, 2009.]

RESPECTFULLY SUBMITTED:

Carol Thomsen
Committee Secretary

APPROVED BY:



Assemblyman Morse Arberry Jr., Chair

DATE: _____



Assemblywoman Sheila Leslie, Vice Chair

DATE: _____

<u>Exhibits</u>			
Committee Name: <u>Committee on Ways and Means</u>			
Date: <u>May 21, 2009</u>		Time of Meeting: <u>9:00 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
* * *	A		Agenda
* * *	B		Attendance Roster
AB 561	C	Keith Munro, AG's Office	Proposed Amendment
SB 416 (R1)	D	Assemblywoman Smith	Proposed Amendment