

ARIZONA STATE SENATE

45TH LEGISLATURE SECOND REGULAR SESSION

MINUTES OF COMMITTEE ON COMMERCE

DATE: April 10, 2002 **TIME:** 8:30 a.m. **ROOM:** SHR 1

CHAIRMAN: Senator Verkamp **VICE CHAIRMAN:** Senator Arzberger

ANALYST: Julie Szperling **COMMITTEE SECRETARY:** Nancy L. DeMichele

ASSISTANT ANALYST: Dallas Gold

INTERN: Nathaniel Searing

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Burns		X		HB 2166	DPA
Senator Hamilton	X			HB 2401	DP
Senator Mitchell	X			HB 2499	DP
Senator Valadez	X			HB 2556	DP
Senator Arzberger, Vice Chair	X			HB 2673	HELD
Senator Verkamp, Chair	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
Carol Sue Anderson	Member, Commerce and Economic Development Commission	RECOMMEND CONFIRMATION
Jose A. Cardenas	Member, Commerce and Economic Development Commission	RECOMMEND CONFIRMATION
Michael Hammond	Member, Commerce and Economic Development Commission	RECOMMEND CONFIRMATION

Chairman Verkamp called the meeting to order at 8:47 a.m., and attendance was taken. For additional attendees, see Sign-In Sheet (Attachment A).

HB 2673 – development authority; correctional facilities - HELD

Senator Verkamp announced that HB 2673 will be held because another bill is moving through the process on the same subject.

EXECUTIVE NOMINATIONS

Carol Sue Anderson, Member, Commerce and Economic Development Commission - RECOMMEND CONFIRMATION

Carol Sue Anderson stated she is from Kingman, Arizona. She commented that she has served as mayor and county supervisor, and believes economic development is a critical component of a community and the State. She said there are many facets to economic development, and she feels that her diverse background will be of value in the decision-making process of the Commission with respect to loans and grants that are provided by funding through the lotteries. She said her past history and tenure with the Commission along with the opportunity to be reappointed is of importance to her community and the State. She commented she is pleased to be considered to serve in that capacity.

Senator Verkamp stated he worked with Ms. Anderson when she served as mayor of Kingman and on the Board of Supervisors. He said he strongly supports this recommendation.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Carol Sue Anderson as a Member of the Commerce and Economic Development Commission. The motion CARRIED by a roll call vote of 4-0-2 (Attachment 1).

Jose A. Cardenas, Member, Commerce and Economic Development Commission - RECOMMEND CONFIRMATION

Stephanie Ashcroft, Appointments Advisor to Governor Hull, stated Mr. Cardenas is unable to be present today as he is chairing another meeting. She said Mr. Cardenas is associated with the law firm of Lewis and Roca, specializing in defending insurance companies in claims and sales practice litigation. She said Mr. Cardenas has been very active in the community, has served on many boards, and the Governor's office is proud to renominate Mr. Cardenas as a member of the Commission.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Jose A. Cardenas as a Member of the Commerce and Economic Development Commission. The motion CARRIED by a roll call vote of 4-0-2 (Attachment 2).

Michael Hammond, Member, Commerce and Economic Development Commission - RECOMMEND CONFIRMATION

Ms. Ashcroft stated Mr. Hammond is also unable to attend today due to out-of-town business. She said Mr. Hammond has been in the real estate business for over 23 years. He has been very

involved in the community, and has served on many boards. She stated that the Governor's office is proud to renominate Mr. Hammond as a member of the Commission.

Senator Arzberger stated she appreciates having members from the rural areas being represented on the Commission, which is a good balance. Ms. Ashcroft responded that she appreciates that recognition, and that the Governor makes it a priority.

Senator Arzberger moved that the Committee on Commerce recommend to the full Senate the CONFIRMATION of Michael Hammond as a Member of the Commerce and Economic Development Commission. The motion CARRIED by a roll call vote of 4-0-2 (Attachment 3).

CONSIDERATION OF BILLS

HB 2556 – sampling; alcohol; off-sale retailer – DO PASS

Julie Szperling, Commerce Research Analyst, explained HB 2556 allows retail liquor stores to provide on-premise samples of distilled spirits, wine or beer to consumers according to prescribed conditions and restrictions. She said the bill authorizes the program until December 31, 2008.

Representative Chevront, bill sponsor, stated this is a simple bill that allows for a small amount of sampling of liquor by one wholesaler or one distributor within a liquor store. He commented that he has been a strong advocate of responsibility of liquor establishments and has fought against the opponents of this bill in an attempt to bring responsibility into the neighborhoods. He pointed out that this bill would not bring any bad elements to the neighborhoods. The measure will allow the marketing of products in the liquor establishments. He said the opponents, who are the beer wholesalers, are against the bill because they have an 80% market share. He indicated this is a very limited bill, and he outlined the criteria that limits off-premise sampling to liquor stores only. He noted if the program does not work, it will most likely be repealed in five years. He believes it is a responsible way of allowing people to sample new products in an establishment that currently sells liquor. He said he is hopeful that the Committee supports this legislation.

Mike Williams, Government Affairs Consultant, Distilled Spirits Council of the US, testified in support of HB 2556. He explained the limitations and restrictions included in this measure. He indicated it is difficult for someone to purchase an expensive bottle of spirits without having a sampling. He commented he has attempted three times to meet with the opposing neighborhood groups, but the meetings were cancelled each time. He stated that the Council does not plan to seek an expansion to administer this sampling program in other establishments, such as Price Costco and grocery stores. He explained that this is a five-year pilot program for stand-alone liquor stores, and after that time the Council will only seek to continue the same program as outlined in this bill. He commented that among supporters of the bill are other spirits wholesalers, 30 liquor stores throughout the State, and the Arizona Retailers Association. In response to Senator Arzberger, Mr. Williams explained the procedure involved in establishing the sampling program.

Senator Verkamp announced the following individuals were present in support of HB 2556: **Kelsey Lundy, Government Relations Specialist, Distilled Spirits Council of the US; Susie Stevens-Matthews, Alliance Beverage Distributing; and Wendy Briggs, Guinness-UDV.**

Don Isaacson, Arizona Licensed Beverage Association, testified in opposition to HB 2556. He stated that the Association has a broad representation with over 1,000 members, and liquor stores

represent approximately 100 members of that group. He pointed out that Mr. Williams was the lobbyist for a bill that passed two years ago allowing for the tasting of liquor products at every on-sale establishment commensurate with a license for the tasting of those products. The number of those establishments statewide comprises approximately 3,000 locations. He questioned why another next step is now being taken with this measure, when tasting already occurs. He believes the supporters of this bill would like to have these samplings take place in other establishments. He emphasized that the general public, neighborhoods and law enforcement entities are becoming very sensitive to liquor issues. He said this bill would make a fundamental change in liquor laws. He clarified that the Association comprises a variety of retailers, and not beer wholesalers. He said that two of the largest liquor store retailers have indicated opposition to this legislation. In response to Senator Verkamp, Mr. Isaacson indicated the 100 liquor store members of the Association have not been officially polled to learn their preference regarding this bill. However, the Board and active members of the Association oppose this legislation and believe it is a mistake.

Philip MacDonnell, Arizona Wholesale Beer and Liquor Association, testified in opposition to HB 2556. He stated that the Association comprises approximately 20 companies that sell beer, wine and spirits. He said the Association has opposed this legislation for the past three years. He explained that the 3,000 locations mentioned earlier refer to locations where "wet sampling" of the product takes place. He noted that the number increases to over 5,000 when hotels and restaurants are included. He explained that stores currently have "dry sampling" in which customers are given a small sample in a container that they can try at home. He said the Association believes it is unwise to pass this legislation.

Paul Barnes, Neighborhood Coalition of Greater Phoenix, testified in opposition to HB 2556. He stated there are no redeeming characteristics in this bill for the neighborhoods. He said the regulatory controls in this bill to prevent abuses will be realistically impossible to enforce. He said the Coalition respectfully requests that the Committee return a "no" vote on this bill.

Donna Neill, Director, NAILEM, testified in opposition to HB 2556. She said a concern with this bill is that it changes Title 4, which states that no open containers are allowed inside or outside liquor retail establishments. She said there are enough problems regarding liquor already in the communities without opening another door. She emphasized the need for everyone to look at this measure very carefully and to support those in opposition to this bill. She urged the Committee to vote "no" on HB 2556.

F.C. Slaght, NAILEM Treasurer, testified in opposition to HB 2556. He stated that NAILEM represents approximately 3,000 neighborhood members in Central Phoenix. He indicated that generalized assumptions are being made that the individuals delivering and receiving the "wet samplings" are going to handle it responsibly. He said the neighborhoods and communities are opposed to this legislation. He pointed out that if the bill passes, additional funding, policing, and other social services will inevitably be needed. He strongly urged the Committee to vote "no" on HB 2556.

Debbie Klein, City of Phoenix, testified in opposition to HB 2556. She stated that there is a clear distinction between on-premise and off-premise liquor establishments. This legislation would blur those lines by allowing establishments that historically have been prohibited from serving alcohol to begin serving alcohol. The reason for undoing these clear lines of demarcation is solely for marketing purposes, as sampling is already permitted in on-premise establishments. She noted that the City of Phoenix believes that there is no compelling reason to now begin allowing off-premise establishments to serve alcohol. In addition, at a time of budgetary cutbacks, it does not make sense to expand

statutes requiring enforcement by the State Liquor Department and local law enforcement officers. The City of Phoenix respectfully requests the Committee's opposition to this bill.

Senator Arzberger moved HB 2556 be returned with a DO PASS recommendation.

Senator Hamilton explained his vote. He stated there appears to be misinformation on this bill, primarily from the opposition. He believes that more work is needed on this issue, and he would like to see the two sides work together. He said he will vote "aye" at this point, but reserves his option to vote "no" on the floor.

Senator Arzberger explained her vote. She stated that when she first saw the bill, it did not appear as though it was as complex an issue. However, she said she will vote "aye" for now.

Senator Verkamp explained his vote. He is concerned after having heard the testimony. He brought up the issue of possible liability in the case of an individual who may have been drinking prior to entering an establishment, and then receives a sample from a liquor store. He believes there are issues that need to be resolved, and he will vote "no."

The motion CARRIED by a roll call vote of 4-1-1 (Attachment 4).

HB 2499 – sales tax rates; pre-existing contracts – DO PASS

Lace Collins, Finance Research Assistant Analyst, explained HB 2499 exempts contracts and written bids entered into before November 8, 2000 from the 0.6% increase in the transaction privilege tax (TPT) passed by the voters in the 2000 general election. She said the bill contains a Proposition 105 clause and requires a three-quarters vote of the Legislature. She indicated that a Joint Legislative Budget Committee (JLBC) fiscal note has been requested. Senator Valadez asked for a best guess estimate in terms of the cost of this legislation. Ms. Collins replied she does not have that information, but perhaps a representative from the Arizona Department of Revenue (DOR) could respond. Senator Valadez indicated that it appears a DOR representative is not available at this time. He asked whether the measure applies to other contractors in addition to prime contractors. Ms. Collins responded she believes it applies only to prime contractors. Senator Valadez asked whether the bill has any implications on long-term contracts over a period of ten to twenty years. Ms. Collins replied she believes it will apply to both long-term and short-term contracts entered into before November 8, 2002.

Representative Cooley, bill sponsor, stated HB 2499 passed out of the Legislature last session and was vetoed by the Governor. He explained that it is a fairness issue and the right thing to do. He pointed out that the bill is narrowly crafted for only prime contractors involving construction projects in progress, which are completed within a reasonable amount of time. He noted that Mark Minter is available to answer any questions.

In response to Senator Verkamp, Representative Cooley stated that the election was November 7 and the tax did not begin until June 1. Therefore, many of the contractors had already completed their work. The contracts that went beyond June 1 had to pay the tax out of pocket versus the tax being considered as a pass through. He noted there are two examples in recent years where a new tax went into effect and the Legislature was asked to approve the process being requested today. The Legislature approved both instances, however, it was never permanently put into statute. He said HB 2499 makes it permanent for the future in the event a contract is written prior to a tax being imposed. In this way, an approval will not have to be requested from the Legislature every few years.

He indicated that Mr. Minter is available to provide data regarding the cost. Senator Verkamp asked whether any specific types of companies will benefit from this bill. Representative Cooley responded that anyone who handles prime contracting and receives progress payments over a period of time will benefit because of work in progress.

Mark Minter, Executive Director, Arizona Builders' Alliance, testified in support of HB 2499. He stated that the Alliance is a trade association comprised of commercial and industrial contractors. He indicated he has lobbied on this issue in the past, and he explained the history of the various taxes related to contracts. He said discussions have taken place with the Governor, who has agreed to sign HB 2499. He noted the bill contains language stating that prime construction contracts will be taxed during their life at the tax rate in existence at the time the contract was entered into by the parties. In response to Senator Valadez regarding long-term contracts, Mr. Minter stated the projects tend to be of a commercial or industrial construction nature, such as high-rise office buildings, ballparks, or prisons. He said he is not aware of such a contract beyond a five-year period. He noted that the Central Arizona Canal project is handled as a series of prime contracts. Senator Valadez said both he and Senator Blanchard have supported this issue in the past, however, they were concerned regarding the long-term contracts. He asked Mr. Minter to elaborate on the issue of setting a statutory precedent in terms of how to deal with this in the future. Mr. Minter responded that a number of cities are considering referring any tax increase to the voters. He said it was determined that pre-emptive language would be necessary so that this issue does not occur again for the Legislature to have to fix the problem each time there is a tax increase. He indicated there is also language in the bill for contracts that do not contain a pass-through provision.

Senator Mitchell asked about the volume of business that would be involved. Mr. Martin responded that the Alliance did not conduct a member survey on this issue. However, the Alliance asked several of its accounting firm members specializing in the construction industry to put together an economic model. He said the result was that the cost would amount to \$2.5 million due in a credit back from Proposition 301 monies to contractors, if they applied for it.

Senator Verkamp announced the following individual indicated support for HB 2499, but was not present to testify: **Tom Dorn, East Valley Chambers of Commerce Alliance**.

Senator Verkamp announced that **Jeffrey Kros, Legislative Liaison, DOR**, was available for questions. Mr. Kros submitted the following written comments: HB 2499 corrects the situation created by Proposition 301, which taxes old construction contracts at the higher rate. This measure is similar to legislation passed twice in the 1980's to deal with other tax increases imposed by the Legislature and the voters.

Senator Arzberger moved HB 2499 be returned with a DO PASS recommendation.

Senator Valadez explained his vote. He stated that this issue was brought up during negotiations of Proposition 301, however, at that time it was difficult to resolve due to the sensitivity of the negotiations. He said an attempt was made last year to work on this issue. He indicated at this point he will support the bill, but he has some reservations regarding the pre-emptive language in the bill. He said he is pleased to see it on the Finance Committee agenda for Monday. He commented that if his reservations continue, an attempt may be made to strike that portion of the bill. At this time he will vote "aye."

Senator Verkamp explained his vote. He stated he has concerns about tying down the amount of money being discussed, and also is concerned with the pre-emptive language mentioned by Senator Valadez. He said in order to keep the bill moving, he will vote "aye."

The motion CARRIED by a roll call vote of 5-0-1 (Attachment 5).

HB 2401 – corporations; documentation – DO PASS

Ms. Szperling explained HB 2401 updates the manner in which various legal documents are to be executed for nonprofit electric cooperatives and corporations sole. She noted that the measure also allows corporations changing their domicile the option of filing an application for authority to transact business in Arizona. She indicated the bill makes technical and conforming changes.

Representative Hatch-Miller, bill sponsor, explained several years ago the laws related to corporations were being revised. He said the two groups that were not able to have their parts of the statutes updated and revised were the electric cooperatives and corporations sole. He indicated those two groups requested that the corporate laws be updated in order to be in compliance with other corporations.

Senator Verkamp announced the following individuals were present in support of HB 2401: **Dean Miller, Legislative Liaison, Arizona Corporation Commission**, and **Tom Jones, Chief Executive Officer, Grand Canyon State Electric Cooperative Association**.

**Senator Arzberger moved HB 2401 be returned with a DO PASS recommendation.
The motion CARRIED by a roll call vote of 4-0-2 (Attachment 6).**

HB 2166 – home inspector regulation – DO PASS AMENDED

Ms. Szperling explained HB 2166 makes changes to the statutes governing home inspectors including qualification for home inspectors-in-training, and for applicants before the end of this year. She said the bill also provides another form of financial assurance and makes changes relating to immunity certificates, reciprocity and compensation of members on the Home Inspector Rules and Standards Committee. She noted two amendments are being offered. The 4-line Verkamp amendment clarifies the board's authority to determine if an applicant who has received an absolute discharge from sentence at least five years before the application is of good moral character and repute. The amendment also makes a minor technical change. The 8-line Verkamp amendment appropriates \$5,760 from the technical registration fund to the board of technical registration for the purpose of paying compensation to the members of the home inspectors rules and standards committee as provided by this act.

Rory Hays, Arizona Home Inspector Coalition, testified in support of HB 2166. She stated that two years ago the Legislature made a determination that it would be appropriate to regulate home inspectors. She said the home inspectors were included with the board of technical registration, which has worked out very well. During that time period rules were adopted and regulation began approximately a month ago. She indicated that during that process it was discovered that there were glitches, and this bill addresses those items. She stated that the Coalition is in support of the two amendments.

John Mangum, Arizona Association of REALTORS, testified that the Association supports the bill and the Verkamp 4-line amendment.

Senator announced the following individual was present in support of HB 2166: **David Swartz, Chairman/Lobbyist, Arizona Home Inspectors Coalition.**

Senator Arzberger moved HB 2166 be returned with a DO PASS recommendation.

Senator Arzberger moved the 4-line Verkamp amendment dated 04/04/02, 3:51 p.m., be ADOPTED (Attachment B). The motion CARRIED by a voice vote.

Senator Arzberger moved the 8-line Verkamp amendment dated 04/08/02, 9:01 a.m., be ADOPTED (Attachment C). The motion CARRIED by a voice vote.

Senator Arzberger moved HB 2166 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED by a roll call vote of 5-0-1 (Attachment 7).

There being no further business, the meeting adjourned at 9:53 a.m.

Respectfully submitted,

Nancy L. DeMichele
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)