MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND CONSTITUTIONAL AMENDMENTS

Seventy-Third Session
April 19, 2005

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order at 3:53 p.m., on Tuesday, April 19, 2005. Co-Chairwoman Ellen Koivisto presided in Room 3142 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mrs. Ellen Koivisto, Co-Chairwoman
Mr. Harry Mortenson, Co-Chairman
Mr. Marcus Conklin, Co-Vice Chairman
Mr. Bob McCleary, Co-Vice Chairman
Mrs. Sharron Angle
Mr. Mo Denis
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Brooks Holcomb
Ms. Kathy McClain
Mr. Harvey J. Munford
Mr. Bob Seale
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman David Parks, Assembly District No. 41, Clark County

STAFF MEMBERS PRESENT:

Michelle Van Geel, Committee Policy Analyst
Celeste Gunther, Committee Attaché

OTHERS PRESENT:

Carole Vilardo, Executive Director, Nevada Taxpayers Association
Margaret McMillan, Director, Government Affairs, Sprint Corporation
Bob Bass, Legislative Advocate, representing SBC Communications, Inc.
Bob Gastonguay, Executive Director, Nevada State Cable Communications Association
Bob Crowell, Legislative Advocate, representing the Nevada Power Company and Sierra Pacific Power Company
George A. Ross, Legislative Advocate, representing the Las Vegas Chamber of Commerce, Las Vegas, Nevada
Helen A. Foley, Legislative Advocate, representing T-Mobile Wireless and PacifiCare Health Systems, Inc.
James Jackson, Legislative Advocate, representing Cingular Wireless.

Co-Chairwoman Koivisto:
[Meeting called to order. Roll called.] We need to ask for a bill draft request for additional attachés [BDR R-1429].

ASSEMBLYWOMAN McCLAIN MOVED TO REQUEST A DRAFT RESOLUTION APPOINTING ADDITIONAL ATTACHÉS TO THE ASSEMBLY. (BDR R-1429) (ASSEMBLY RESOLUTION 4)

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Co-Chairwoman Koivisto:
This is something that happens during session when people leave or something and we need to hire new attachés.

THE MOTION PASSED. (Ms. Giunchigliani, Mr. Holcomb, and Mr. Munford were not present for the vote.)

Co-Chairwoman Koivisto:
We will start with Mr. McCleary's Assembly Bill 415.

Assembly Bill 415: Requires disclosure of name of Legislator who requests preparation of legislative measure on list of requests prepared by Legislative Counsel. (BDR 17-772)

Assemblyman Bob McCleary, Assembly District No. 11, Clark County:
Assembly Bill 415 proposes to require disclosure of the name of the legislator who requests a piece of legislation. The idea came to me during the interim when I was looking through the BDR list they send us. I would see a proposed topic of legislation, and I'd think about questions I would like to ask, but because you don't know who the legislator is, you can't contact them. You don't have any way to make suggestions or proposals. On the more controversial issues, it might be helpful to disclose the name of the legislator so that some of the more controversial points can be worked out before session to speed the process along.

If an idea is good enough to propose legislation, then why isn't it good enough to put your name on it? I have a problem with that. As an example where this went wrong, last session, a legislator thought he would make a funny political statement by proposing a bill draft to change the name of the State of Nevada to East California. For him, it was a joke. But for Legal, it was a nightmare. They had to reference every time "Nevada" was mentioned in the statutes. The bill was huge and took hundreds of hours to finish. And although the intent was never to go through with the bill, just make a statement, it was irresponsible. I think he would have thought very seriously before proposing it had his name been on that bill.

Mr. Mortenson made a good point that I hadn't considered. He said that a BDR may start as an idea, but he might not know yet if he wants it to be a bill. But I think it's a matter of good policy.

Assemblywoman Giunchigliani:
We've attempted several times to pass this legislation. Mr. Price generally brought it forward. I, too, don't know why we don't do this. I put my name on all of the bills I sponsor. If I pick up a bill, I wouldn't mind saying so. That way, people know who is doing it. People think it might impede the process or kill a bill before it was even introduced. But I think it would cause people to have conversations and reduce duplicate bills in both Houses. We, as legislators, could work out our differences and become joint sponsors. I added joint sponsorship years ago so that you could have that partnership, and Legal didn't have to draft the same bill twice. This is a bill that tends to pass in this House, but not get out of the other one.

Assemblywoman Angle:
I always disclose my name on bills. But I wonder if legislators would wait until the deadline to propose a bill so they wouldn't have to have their name on it.

Would this clog up the Legal Division? If you have to disclose, will you wait to the very last moment to do it?

Assemblyman McCleary:
We have certain deadlines by which to submit bill draft requests. My understanding, from my conversations with Mr. Wasserman in bill drafting, everyone waits until the deadline anyway. He'll call everybody when it's getting close to the deadline, because he knows, if he isn't getting very many, he'll get them all at the end. So it's not going to change anything from the way it is.

Co-Chairman Mortenson:
I've felt comfortable not putting my name on some bills, on occasion. After you go through the campaign, you have just a little time to finish preparing your bills. I had many bills done before the campaign started. But after the campaign, I had a few good ideas, but I wasn't sure and wanted to talk to some people and to Legal, and I knew Legal was very busy. So I put them in without a name because I didn't know if I wanted to make a bill out them, and on several of them I didn't. It doesn't cause Legal any hassle; they write the BDR description, and that's it. Always, on these bills, I ask them not to proceed until I give them further instructions. So it takes up that spot, because you lose it if you don't use it.

Assemblyman McCleary:
It's a valid point. I have many ideas for bills, but I send them to the Research Division, and as an idea matures to the point that it's something I want to pursue further, I'd send it to drafting. I've seen some people put very general descriptions, such as, "An act affecting education." I don't think drafting has any qualms about you writing your own title, if you want to keep it as generic and bland as possible, especially so it can't be used against you during the campaign.

Assemblywoman Giunchigliani:
If you put in a request and make a decision not to act on it, you can withdraw it at that point. It would show that you had a concept, met with people, and hadn't resolved the issue. To me, it's better because if a constituent comes by with an idea, you can put in a bill draft "by request." It's their access to the process. Openness is better than not.

Assemblyman McCleary:
Openness. The public is continuously asking that we disclose everything. This is very basic.

Co-Chairwoman Koivisto:
[Closed the hearing on A.B. 415.]

ASSEMBLYMAN CONKLIN MOVED TO DO PASS ASSEMBLY BILL 415.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Carole Vilardo, Executive Director, Nevada Taxpayers Association:
I love the bill and I'm glad that you passed it out of Committee. I have supported this version and this language every time it's come up. Does this mean that when a name is shown on the bill draft list, and there is another bill that appears to be similar, Legal would automatically tell the sponsor of the second bill that there is already another bill draft request on this subject?

These lists are not published until July of the year before session. On the bill draft request list, we had bills that were requested while the Legislature was still in the [previous] session. When I see two or three bills that have the same description because the sponsors had the same idea, why doesn't Legal say anything? It's because of confidentiality. But if there is a provision allowing the sponsor's name to be used, then Legal can share the information. On occasion, when someone's name was on a bill, I would call them and let them know I was interested in the bill and get a dialogue going. Thank you for putting this out so quickly, but I think that would help make the system and process more efficient.

Co-Chairwoman Koivisto:
That is one of the questions that Legal asks now, if someone else has a bill that's substantially the same.

Assemblywoman Giunchigliani:
Currently, since names are not required to be listed, Legal will not do that. They will say that they know of something of a similar nature, but they cannot divulge who the sponsor is. Regarding Ms. Vilardo's question, by having disclosure, would this allow Legal to inform them that there is a similar bill and to discuss that with the other party? The language in subsection 4, which we added several years ago, was to try and stop people from doing duplicates by being joint sponsors. The person whose BDR was proposed first got to be the primary sponsor.

[Assemblywoman Giunchigliani, continued.] We would have to specify that Legal would be able, upon release, to share that information from one sponsor to another when the bill draft request was substantially similar. We may also want to add that, if you pick up legislation, the names can also be disclosed as well.

Assemblyman McCleary:
Is that something that the Legislative Commission could do?

Assemblywoman Giunchigliani:
We'd need to check with Legal. I believe that because our rules are transitory we could lose the intent. We may have the same problem with the Legislative Commission trying to interpret this. Since it's already in statute, we'd have to make it clear.

Assemblyman McCleary:
I would have no objection if it's the wish of the Committee to reconsider its action and amend with the suggestions by Ms. Giunchigliani.

Co-Chairwoman Koivisto:
[Closed the hearing on Assembly Bill 415.]

ASSEMBLYMAN CONKLIN MOVED TO RESCIND THE PREVIOUS ACTION ON ASSEMBLY BILL 415.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO PASS ASSEMBLY BILL 415 BY AMENDING SUBSECTION 4 TO ADD THAT THE LEGISLATIVE COUNSEL BUREAU MAY NOTIFY A REQUESTOR OF THE SPONSORSHIP OF A SUBSTANTIALLY SIMILAR BILL DRAFT REQUEST, AND ALLOW THE LEGISLATOR'S NAME TO BE ADDED TO BILLS THAT ARE PICKED UP AFTER THE ELECTION.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Assemblywoman Gansert:
It's important to note that they have to be substantially similar in nature so that the Legislative Counsel Bureau is not giving away information on a particular person's bill when they may not want that. Maybe we could add that whoever submits the bill with their name provides permission to the LCB to give out that information.

Assemblyman Conklin:
If Legal gets a bill draft request for something that is substantially similar [to another request], they can notify the second requestor that there is a substantially similar bill out and who the sponsor is. They're not going to give details of that bill, just a notification so that if that person chooses to contact them, they can. That takes Legal out of the picture.

Assemblyman McCleary:
That's my understanding. If it is a similar topic, they can't give out the text of the bill until it is introduced. All they could say is that there is a similar topic.

Assemblywoman Giunchigliani:
The intent would include that it's up to the first sponsor, whoever requested it first, to work together or not. If they can't work it out, then each legislator would put their draft in separately, which is what we do now.

Assemblywoman Gansert:
I want to make sure we don't put Legal in a difficult or awkward position of giving out information when the original sponsor didn't want it to be provided. So the question is not only whether the person who sponsors the bill wants to disclose their name, but also to give Legal permission to provide that information to others if they viewed it as substantially similar.

Assemblyman Conklin:
I'd be concerned, as you are, except that giving Legal a title doesn't mean you've given them any information to draft the bill yet. The title is due before the September 1 deadline. But you can turn in your five bills with no backup material to tell anybody what's actually going into that bill yet.

So this amendment is only as good as the information we give LCB for drafting. If have a bill you are uncertain about, or you don't want the content shared, you can simply not turn it in for a while. Legal still drafts based on the order in which the BDR was submitted, not based on the order in which information for that BDR comes in.

[Assemblyman Conklin, continued.] My understanding of the way drafting works is that if you turn in the first BDR request but don't turn in information on it until the day before session, you still go to the front of the list because you have the oldest BDR.

Assemblywoman Giunchigliani:
Both are correct. What we're suggesting is for Legal to recommend that a sponsor look at another BDR if there seems to be a similar title. Since their name would already be disclosed, the two sponsors can then discuss it or not. Mrs. Gansert is correct, I don't want to put Legal in the position of making the decision to disclose more information. Then it's up to the first sponsor to agree or disagree. I don't want Legal to get into drafting language, because the bills might be on the opposite side of an issue. But if the concepts were similar, discussion might eliminate duplicates.

Assemblywoman Angle:
When the BDR list is published, our names are disclosed, and we're going to know someone has a similar bill. Rather than going through LCB, we can go directly to that other legislator. I agree with Mrs. Gansert that we don't want to put Legal in that position.

Assemblywoman Giunchigliani:
That's a good point. But I'm talking about before the BDR list is published in November. Currently, Legal can't tell anyone that there is a similar bill, or suggest that the sponsors talk to each other. This would be prior to that initial publication. Once it's public, LCB should not be involved in it; it's up to us to go through the list to see who has similar subjects.

THE MOTION CARRIED UNANIMOUSLY.

Assemblywoman Gansert:
I want to reserve the right to vote no on the Floor.

Co-Chairwoman Koivisto:
[Opened hearing on Assembly Bill 543.]

Assembly Bill 543: Provides for specified information to be confidential to assist legislative committees and studies in obtaining information. (BDR 17-470)

Assemblyman David Parks, Assembly District No. 41, Clark County:
As Chairman of the Legislative Commission Subcommittee to study telecommunication services in Nevada, we completed a report during the last interim. The Subcommittee had difficulty in obtaining information that would have been helpful in completing our study. Many companies refused to disclose sensitive information to the Subcommittee or its consultants. These companies feared that the information could be obtained by their competitors or the media, since it was not considered confidential by statute.

The purpose of the Subcommittee introducing A.B. 543 is to give legislative committees and interim study committees an additional tool to aid in obtaining important information by encouraging voluntary—and I emphasis voluntary—disclosure of information and safeguarding the confidentiality of this information. The Subcommittee believed that having an additional process or procedure to obtain sensitive information would enhance the ability of legislators and committees of the Legislature to carry out their responsibilities to the citizens of Nevada.

A.B. 543 provides the legislative committee or interim study committee the ability to designate an outside consultant—an independent third party—or individual to receive the information, including confidential information, and create a report for the legislative committee or the interim study committee based upon that information.

A person providing information to this outside consultant may designate as confidential any of the information they provide to that outside consultant. The outside consultant may include such confidential information in the report only if the confidential information is aggregated or otherwise combined with other information so that the confidential information cannot be identified as such.

The outside consultant must not release the confidential information to the legislative committee or the interim study committee or any other persons except for employees or staff of that outside consultant necessary to create a report.

The report itself may be released to the legislative committee or interim study committee, and they may release the report to the public. The outside consultant must destroy the confidential information by a date designated by the legislative committee or the interim study committee after the report is completed. All information designated as confidential pursuant to this process shall be deemed confidential for all purposes related to this bill.

Further, legislative committees or interim study committees would be greatly assisted by the enactment of A.B. 543.

Assemblyman Seale:
This is a voluntary program, so the company could participate if they wished, and if they didn't wish, they wouldn't have to?

Assemblyman Parks:
What we experienced with the telecommunications study was that the various companies felt providing that information to the Legislature would release proprietary information, and they were very uncomfortable with doing that.

For the telecommunications study, some information was provided by various telecommunications companies and a report was generated, but it would have been far more helpful to have had an established process to assure these companies that whatever they provided would be held confidential.

Assemblywoman Giunchigliani:
In Section 1, subsection 1, paragraphs (a), (b), and (c), are there consultants out there that you could hire to do this?

Assemblyman Parks:
When we are talking about consultants, we are also talking about individuals. Typically, it would be a consultant. It would be for anything we would want to study, not just telecommunications, but certainly anything in an industry that the Legislature would regulate. In all likelihood, it would be a professional consultant who would have qualifications to perform the various studies that the Legislature might ask for.

Assemblywoman Giunchigliani:
Since they would be contractors, can you restrict them, once they've completed the job of obtaining this information and stopped working as a contractor for the State, from utilizing that proprietary information later?

Assemblyman Parks:
We can certainly accomplish that by contractual arrangement.

There are still problems that some of the regulated utilities have relative to this. They will express their concern. As elected individuals, we have a responsibility to the public of Nevada to act in their best interest. Unfortunately, sometimes we don't have the ability to get the data with which to make the decision on what is best for the people of the state.

Assemblyman Seale:
Who gets to see the information? Is it just the consultant and not the legislative Body? The consultant is doing the redacting and aggregation so the legislative Body never has access to it. Because this place leaks like a sieve at times, I worry that the information might get out. If there is a consultant doing the redacting, why don't we ask the companies themselves to do the redacting, aggregation, et cetera?

Assemblyman Parks:
The information that would be provided would typically be proprietary. Without having competitors' information, they would not have the ability to do the aggregating. They can certainly submit information of a very general nature, but it would require an independent third party to aggregate the data by including information from other providers of this service so no one can tell what percentage or share any one of them has.

Assemblyman Seale:
So the raw data never gets to the Legislative Commission.

Assemblyman Parks:
That is correct. The raw data would not make its way to a committee or the Legislative Commission.

Assemblywoman McClain:
Can you give us some examples?

Assemblyman Parks:
The best example was the study of telecommunication services in Nevada that was completed in the last interim. We asked the various telephone companies and telecommunications providers to provide us with information related to the services they provide. We found that they had a level of reservation to doing that.

What we were able to do, so we could at least look at this issue, was to utilize the services of the Public Utilities Commission (PUC) and, through them, individuals they had as contractors to the PUC. They were able to be the intermediary third party for receiving and aggregating this data.

I don't want you to think that it is strictly the telecommunications industry. It could be other regulated businesses that the State has authority over.

Assemblywoman McClain:
So it was information that they weren't required to give to the regulators? It wasn't information that they would be required to give in order to be in business?

Assemblyman Parks:
We have experts who are going to testify. Given that they are regulated by the State, there is still a certain level of proprietary information that they maintain. The Public Utilities Commission, in some cases, has the ability to receive certain information. But this would be broadly applied to all businesses where the Legislature has a regulatory role.

Margaret McMillan, Director, Government Affairs, Sprint Corporation:
[Submitted (Exhibit B).] One of the issues is that the telecommunications industry has evolved. As Sprint, SBC, the local telephone companies, and other companies that provide basic telephone service, we are regulated by the PUC and have to provide certain information.

That's not true for competitive companies, nor is it true for the wireless industry. So much of what we provide automatically becomes competitive information. We have a procedure with the PUC whereby that can be kept confidential.

As you know, wireless is becoming very competitive and, in certain instances, people don't have a local telephone service; they only have wireless, and those rules don't apply. When you have a committee hearing where all of these entities come together, some of the information we provide to the PUC a competitive company isn't required to and does not want to because it's competitive information.

The bill before you is an outcome of the Interim Committee. Sprint, along with the other telecommunications companies, participated in the hearings and applaud the work of the Committee. A.B. 543 was developed in response to the Committee's desire to review certain confidential information of competitive telephone companies. That type of information could not be provided to the Committee without some assurance that the information would be kept confidential. Unfortunately, the bill as it is written has serious flaws and cannot be supported by Sprint.

There're three major problems with the bill. The first is that Sections 1 and 2 provide for the protection of the identity of the source of information, the consultant, but not for the information itself. In fact, the bill allows the

consultant to release the information included in a report to "any person or the public, in whole or in part." So once the consultant gets all the information to prepare the report, they could release it.

[Margaret McMillan, continued.] Secondly, the bill allows the consultant to create his own process for obtaining and handling the confidential information. It does not require the consultant to get a vote of the Committee approving the proposed protection process. Giving consultants such unchecked discretion could lead to the abuse of the process, which could result in an unfortunate disclosure of confidential information.

Third, A.B. 543 is overly broad. It applies to any confidential information of any person or entity. While the bill originated as a telecommunications issue, the bill language extends to all persons and entities regardless of their personal activity or type of industry. There is nothing in A.B. 543 to prevent legislative consultants from collecting information on any marketing plans or personal information of any person if the topic were of interest to the Legislature. So if there is an issue the Legislature is interested in, they could hire this consultant to gather all the information and release it. This bill doesn't just apply to regulated utilities.

As Mr. Parks mentioned, we all participated in and were in agreement with it. But, in the drafting, the way the bill does it has changed, and it's a problem.

Assemblywoman Giunchigliani:
We thought it would affect, as Mr. Parks said, only the regulated industries, but as drafted it is broader in scope. Is that what you are saying?

Margaret McMillan:
The way it came back, it could cover anything. As it is written, there is nothing that specifically talks about telecommunications, so it could cover the gaming industry, the health industry, et cetera. Nor does it designate a difference between regulated utilities and nonregulated utilities. In many instances, we function pretty much the same way. As a regulated company, we provide some of the same services that a nonregulated company does. The information we provide to the PUC is not necessarily required of competitive companies.

Bob Bass, Legislative Advocate, representing SBC Communications, Inc.:
A lot of the comments that Margaret McMillan made are similar for SBC in northern Nevada. We support the efforts of Mr. Parks to find ways to protect confidential and proprietary information. However, in Section 1, subsection 2,

the bill doesn't clearly define the protection of that proprietary or confidential information.

Assemblyman Denis:
Currently, how does the PUC handle confidential information from regulated utilities?

Bob Bass:
We have disclosure agreements with the PUC; we know that information is protected. Those agreements are in place now for anything we do with the Commission.

Bob Gastonguay, Executive Director, Nevada State Cable Communications Association (NSCTA):
I would echo the comments of my colleagues. Unlike my colleagues, my portion of the industry is not regulated by the PUC. We are under the jurisdiction of local franchising authorities and the FCC [Federal Communications Commission].

My clients had real reservations about releasing some of the information, as did the telecommunications industry. We think this is too broad a piece of legislation. We hope we will be able to work with the subcommittee to narrow this down.

Assemblyman Seale:
Can this be salvaged? Are there amendments that can be made that would make you comfortable and still get to the point of where Mr. Parks was going with it?

Bob Gastonguay:
We believe so.

Margaret McMillan:
We certainly will work with the subcommittee to work out the problems with it.

Bob Bass:
We would echo those sentiments as well.

Bob Crowell, Legislative Advocate, representing the Nevada Power Company and Sierra Pacific Power Company:
The majority of our business is regulated by the PUC. Despite the use of the word "public" in Public Utilities Commission, there are certain documents that are disclosed in utility rate cases and utility proceedings that should not be

public for a number of reasons. We're asked to provide financial forecasts, earnings forecasts, and the like, which can affect not only the market and shareholder interests but the interest rates on bonds, which can affect the rates our customers pay.

[Bob Crowell, continued.] We enter into a number of contracts for the purchase of electric power. It's routine in those documents that there is a confidentiality agreement, especially price and terms of delivery. Frequently, the person who's selling the power to us requires those terms to be in them. Knowledge of the price is knowledge of the market, so generally those are confidential.

Mr. Seale asked if this bill can move forward. One of the major issues I have with it is that the consultant is generating the qualifications and criteria that surround the use of confidential information.

At the PUC, there is an underlying statute that speaks to confidentiality and what you have to do to claim confidentiality. On top of that, there is a formal, written agreement that is required to be executed by all the parties, including government attorneys, that speaks to the time, manner, and use of confidential information. That document is prepared by attorneys for the power company. It's done not only for internal purposes, so we are comfortable on how the information is going to be used, but also to represent the interests in confidentiality of those who supply us with power as well.

If this bill were to say we could give confidential information, but on terms that we feel are sufficient to protect the nature of the information we're giving, that would go a long way to solving our problem. We would be happy to give the Committee and Mr. Parks copies of confidentiality agreements that we routinely enter into.

George A. Ross, Legislative Advocate, representing the Las Vegas Chamber of Commerce, Las Vegas, Nevada:

I'll try not to be redundant. The previous speakers made several of the points that are important. However, the Las Vegas Chamber is concerned because this is a very broad bill. It appears to encompass virtually all of business.

I speak from years of experience with a major company where governmental bodies wanted to find out extremely confidential information. A lot of what Mr. Crowell said I agree with. Even though he was speaking specifically about regulated power companies, those same principles apply to any free-market, highly competitive organization.

You are absolutely petrified that someone you cannot trust, someone not under the kind of constrictions that Mr. Crowell explained, would get a hold of your pricing principles, pricing intentions, cost structure, marketing strategies, et cetera. This is extremely confidential information.

[George R. Ross, continued] The way the bill is drafted, it's a consultant whom the Committee chooses. When you choose a consultant, and I understand why you don't want the industry or any industry to choose the consultant, it should be one whom the industry could approve. It should be a joint decision, someone they had some experience with, someone they trusted and whom they knew would use the data properly.

I agree with the principles Mr. Crowell mentioned as to how this consultant must handle confidential data. It should not be just up to a consultant to decide this. Business today is consultants and outsourcing; with every client we have, we sign a confidentiality agreement. Nevertheless, we are concerned that the kind of information obtained through this bill ought to be protected in as ironclad a way as possible.

There is another wrinkle in Section 3. It says, "The information shall not be deemed confidential pursuant to this section if: (a) The person submits the information directly to (1) the Committee or any member of the Committee, or the staff of the Committee, other than the consultant, or (2) if he obtains the information in a non-confidential manner.

This has to do with those industries that are highly regulated by anti-trust laws or that face a great deal of anti-trust law exposure.

There are times when, on an individual company basis, you will give a legislator information on a confidential basis. You would not tell this publicly, to another company, or if that person was with someone else. But if it was somebody you trusted, then you would tell this, because it might be critical to the situation. Under this bill, once you did that, this could potentially be nonconfidential information. It may be a concern, but, if this bill is narrowed down to just telecommunications, it may not be of concern. In other industries, this would be an extraordinarily important concern.

Assemblyman Seale:
Mr. Crowell, is there any information that the PUC doesn't have that this Commission might need? All of the confidentiality agreements are in place with the PUC. Couldn't that information be extracted somehow from them? Or is there more information that the Commission might want?

Bob Crowell:
So what you're saying is, could we give the information to the PUC and let the committee or consultant go to the PUC and get that information? Probably not. The agreements that we entered into with the agency, its staff, and its consumer advocates say that if they have information, they may not disclose that to anyone other than people we tell you to disclose it to. When we make that requirement, we're very clear that we know exactly who has that document, how many copies are to be made, what you do with each document and every copy. It is important that we know the location of that information.

Assemblyman Seale:
So what you are saying is that you have to go around the PUC with new information in order to comply with this bill?

Bob Crowell:
That is correct. The situation is also such that if the PUC says they need information, we will give it to them, but under a confidentiality agreement. We have those procedures worked out. I don't believe there is any information out there that, at least in the regulated environment, they could request that we wouldn't give, under a confidentiality agreement.

In other words, there is nothing we would tell our regulator that they can't have access to, but we say that, pursuant to the underlying statute regarding confidential information, we will give it to them on the terms we work out in our confidentiality agreement. And we control that agreement. If they don't execute it the way we ask, we don't give them the information. That rarely happens.

Assemblyman Denis:
You mentioned that there are statutes the PUC uses that enable them to do the confidentiality agreements; is that correct?

Bob Crowell:
That is correct.

Assemblyman Denis:
Could we use those same statutes and maybe modify them so the Interim Committee could be able to get that same type of information? I'm assuming that the information they're looking for is similar to what the PUC would be looking for.

Bob Crowell:
The same thought crossed my mind. I'm not certain you can do that, but I'm not prepared to answer that question. Part of the reason the confidential system works in the regulatory environment is because we know who the players are all the time and where they are.

You're only here for four months out of every two years. There would be a concern as to what is going on with that information when you're not in session. I suspect you could use the PUC law to say that this only applied during the legislative session. It might work if you have a very definitive way to say that this information will be destroyed at the end of that session.

Assemblywoman McClain:
I'm not too sure that anything we touch doesn't become public, anyhow.

Helen A. Foley, Legislative Advocate, representing T-Mobile Wireless and PacifiCare Health Systems, Inc.:
I will only address a couple of our concerns that haven't been brought up yet. In Section 1, subsection 1, it says, "If the Committee determines it necessary to request one or more persons to submit confidential information." If only one was required to submit confidential information, it would be very difficult to aggregate it with anyone else's. If that company happened to be one of the largest companies in a field, even if the name of the company wasn't revealed, it would be easy for people to identify who it was.

Because there are so many wireless companies, and pricing and other things are extremely competitive, when we were asked by the Interim Committee to provide information on total revenues from voice services, it was very disturbing to most of us. It would be the same as asking every department store in town for their total revenues.

If you are not a regulated industry, it means there is a lot of competition, and the marketplace should take care of many of these issues rather than government. If you're the only game in town, there have been provisions made for monopolies. In the telecommunications arena, those lines are becoming blurred.

I appreciate what Assemblyman Parks was attempting to do, utilizing the consultant and trying to obtain as much information as possible, but it caused an awful lot of heartburn for many of the companies in having to provide proprietary information. What would prevent someone from submitting a request

through the Freedom of Information Act (FOIA) [5 U.S.C. 552], and if information is there about their company, from eventually receiving it?

[Helen Foley, continued.] Hopefully, there may be some ways to amend this. I wouldn't want it to apply exclusively to the telecommunications industry and no others, but I see that there could be some other problems.

James Jackson, Legislative Advocate, representing Cingular Wireless LLC.:
I won't repeat the things that have been said. What Ms. Foley just said is a key concern for Cingular. Some information is so proprietary or so identifiable to one company or provider, that if it's the single source of the information, everyone would know where it came from.

The good part about the bill is that it continues to be a voluntary process for companies to participate in. For the company I represent, there is a desire to provide information when and how we can, but to do so in a way that is safe for them to provide from a business sense.

Co-Chairwoman Koivisto:
I'm going to ask Mr. Denis to chair a subcommittee for this, and Mr. Conklin and Mr. Seale to serve as members, to work with Mr. Parks and all the folks who are concerned with the bill. Having worked on interim committees and studies, I know the lack of good information is one of the biggest obstacles to overcome, so I certainly understand where the bill is coming from.

We have some amendments that Committee members have asked to see. We'll have a meeting behind the Bar when we get the amendments so that you can look at them and hopefully address your concerns.

If there is nothing else, we are adjourned [at 5:00 p.m.].

RESPECTFULLY SUBMITTED:

Celeste Gunther
Recording Attaché

RESPECTFULLY SUBMITTED:

Sarah Gibson
Transcribing Attaché

APPROVED BY:

Assemblywoman Ellen Koivisto, Co-Chairwoman

DATE:

EXHIBITS

Committee Name: **Elections, Procedures, Ethics, and Constitutional Amendments**

Date: **April 19, 2005** **Time of Meeting:** **3:45 p.m.**

Bill	Exhibit	Witness / Agency	Description
***	**A**	**********	Agenda
A.B. 543	**B**	Margaret McMillan, Director, Government Affairs, Sprint	Copy of testimony