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

Seventy-Third Session
May 3, 2005

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments Subcommittee was called to order at 2:07 p.m., on Tuesday, May 3, 2005. Chairman Mo Denis 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:

Mr. Mo Denis, Chairman
Mr. Marcus Conklin, Vice Chairman
Mr. Bob Seale

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:

Ann Pongracz, General Counsel, Sprint, Las Vegas, Nevada
Bob Gastonguay, Legislative Advocate, representing Nevada State Cable Telecommunications Association, Reno, Nevada
Robert Crowell, Legislative Advocate, representing Nevada Power Company, Sierra Pacific Power Company, Carson City, Nevada
Bob Bass, Legislative Advocate, representing SBC, Las Vegas, Nevada

William Uffelman, Legislative Advocate, representing Nevada Bankers Association, Las Vegas, Nevada
Kent Lauer, Executive Director, Nevada Press Association, Carson City, Nevada
Jack Kim, Legislative Advocate, Representing Sierra Health Services, Las Vegas, Nevada
George Ross, Legislative Advocate, Representing Las Vegas Chamber of Commerce, Henderson, Nevada

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

Chairman Denis:
I know that there is a proposed amendment some of you have worked out. I want to take some testimony on that first, and then we'll take questions and comments.

Assemblyman Parks:
This was a bill draft that came out of the interim study committee on telecommunication services in Nevada. The idea behind it was that it was difficult to get certain information, because of its proprietary nature, from corporations and businesses that are regulated by the State. We, as legislators, should have the opportunity to have access to needed information in our efforts to make the best possible policies. That was the genesis of Assembly Bill 543. In the hearing we discovered a fair amount of opposition to the bill as it was drafted. There was also proposed language developed by a group of interested individuals.

I have had an opportunity to review the proposed language that was a collaborative effort by Sprint, SBC, Sierra Pacific, Nevada Power, and Southwest Gas. I'm very impressed with their proposed language. I think LCB legal counsel may want to do a little tweaking to make sure it fits within the legislative framework of NRS [*Nevada Revised Statutes*.]

Ann Pongracz, General Counsel, Sprint, Las Vegas, Nevada:
Sprint's first problem with the bill is that it protects the identity of the source of the information, but not the information itself. Secondly, it offers inadequate protection for even the identity of the source of the confidential information.

Thirdly, it's terribly overbroad. It allows legislative consultants to collect confidential information on any person and any entity in the state of Nevada.

In an attempt to address these concerns, we have proposed a series of amendments. However, we are concerned that even our amendments don't totally suffice in terms of addressing these concerns. Human beings are not computers, and once confidential information is released to any person, even with the best of good intentions on all sides, information can be inadvertently disclosed.

I will walk you through each of our amendments to A.B. 543 (Exhibit B). Section 1(b) is amended in our draft to require the committee to issue a written authorization designating that the consultant may receive the confidential information. The initial bill stated that the committee would expressly indicate that, but it did not begin to create the kind of paper trail that a concerned party might be able to rely upon in later days if there has been some type of deliberate or inadvertent disclosure of confidential information.

Section 1(c) has been amended along the same lines to require the committee to document in writing the duties of the consultant to implement proper safeguards for confidential information. Section 1(d) requires the consultant to make a written commitment to safeguard the confidentiality of the information prior to receiving it. Taking those three amendments together, we still need to consider whether further amendment is required to make it clear that the information itself needs to be protected as well as the source of the information.

Section 1(e) sets a sunset date for consultant retention of the confidential information. It states that the consultant may not retain the confidential information for more than a year after the adjournment of the next regular legislative session. That allows for retention during an interim session and during one subsequent session.

Section 2(a) requires a vote of the committee to approve the consultant's method for protecting confidential information. The prior language of the bill did require committee approval, but it did not define that the committee actually needed to take a vote and formalize their approval of the consultant's method for protecting confidential information.

The amendment to Section 2(b) requires the consultant to work with any potential disclosing party to develop a mutually acceptable nondisclosure agreement, and excuses the party from requests for disclosure in the event that the consultant and the party cannot agree on the terms of the agreement.

Beginning with this amendment to Section 2(b), we have several provisions that are an attempt to bring the procedure authorized by this legislation into closer alignment with the procedure that is utilized at the Public Utilities Commission (PUC) for receipt of confidential information from public utilities. I think we have a workable system at the PUC that is rarely breached, but I will not say never. I've known several instances where protective agreements have been breached in this state through inadvertence.

In another state, I had an experience with deliberate disclosure of confidential information that was submitted subject to a protective agreement to that state's public utilities commission. So there is still some risk here, but at least if you move this process closer to alignment with the PUC process that many of us are familiar with and that has been tested over time, I think we will be well served.

Section 2(c) requires the consultant to provide the disclosing party with a written description of the consultant's confidential information protection procedures. Different consultants may choose to protect confidential information in different ways. Some take the approach of, for example, a locked safe or a locked desk drawer. Some people have special procedures for the handling of electronic data that will be required in most instances these days. The consultant is required by the amendment to Section 2(c) to explain to the disclosing party how he or she proposes to protect the information. That's very important for assisting the attorney for that potentially disclosing party to be able to advise their client about whether or not it would make sense to comply with an information request.

Section 2(c) has also been amended to require the consultant to execute the nondisclosure agreement with the disclosing party before accepting confidential information. What that does is place the burden on the consultant to make sure the consultant has executed a protective agreement that is acceptable to the disclosing party before the consultant accepts the information. It is not the obligation of the disclosing party. Of course, the disclosing party will be highly motivated to do this, so I don't think we need to worry about that side, but here the obligation is placed squarely on the shoulders of the consultant.

Assemblyman Parks mentioned in his presentation that this legislation originated in the context of the interim Assembly Concurrent Resolution 2 Committee. That hearing was for many of us an instance of first impression for legislative hearings, and we did work with the consultant on developing a protective agreement. A number of us in the industry did, subject to that protective agreement, provide confidential data, including data in an electronic format, to the committee consultant. So we have a bit of experience with how this works.

We've seen some of the pitfalls because the rules of the game were not clear. Based on that experience, we think it is very important that we lay out the ground rules clearly in statute if legislative committees in general are to gain the ability to request this type of information through a consultant.

In addition to executing the protective agreement, and in addition to protecting confidential information while they retain it, Section 2(d) also requires the consultant to share with the disclosing party any draft report that utilizes the party's confidential information before the report is provided to the committee. This is a very important safeguard. It has a parallel in PUC procedures. If there is a desire in a PUC proceeding for a party to utilize confidential data in a public record, the party seeking to disclose it needs to provide advanced notification to the disclosing party so the disclosing party has an opportunity to oppose that disclosure if they think it's appropriate to do so. Of course, in a legislative committee there is not quite as much formality, but that's why it's very important to have this requirement for sharing of drafts utilizing confidential information before it goes forward to the committee.

Section 2(d) further requires that if the parties believe that the form of the utilization of the confidential information in the report would disclose either their identity or the confidential information itself, the parties then work with the consultant in good faith to either modify the report or remove it from the report entirely. The problem that is caused by the disclosure of confidentiality can be very substantial. In any type of competitive business, confidential information is worth a lot of money. It can be confidential information about a marketing plan or a new product. Confidential information about individuals can jeopardize their most important asset: their reputation. So it's very important to ensure that in any use of confidential information, the disclosing party receives a notification before that information is disclosed to the committee.

Section 3 looks at these issues from a different vantage point. It makes clear that while it is crucial that the committee and the committee's consultant observe all proper procedures for protecting confidential information, it's up to the supplier of the confidential information to make sure that they mark the information as confidential before they provide it to the consultant. If the disclosing party fails to do that, it's not the fault of the consultant for not treating it as confidential. The burden is upon the disclosing party. For example, if Sprint were requested to provide information, we would have to mark the information as confidential before we provided it to the consultant, before we talked about the protective agreement with the consultant, and before the consultant would utilize it in any fashion. The disclosing party has to maintain

their claim that the information is confidential in order for it to qualify for the protections that we've set forth in the amendments to Sections 1 and 2.

Section 4 is just a clarification, requiring the consultant to aggregate confidential data to protect the confidentiality of the information. For example, if the committee is interested in looking at whether there is enough competition in the business of producing widgets to generate a certain amount of tax revenue, the amendment to Section 4 would require that the data for all of the producers of widgets would have to be reported upon in the aggregate. It would be that number that would provide the basis for developing the tax projections and the calculations of the potential rates.

The amendment to Section 5 states that the consultant may not release confidential information to even a member of the consultant's own staff unless the staff member also executes a nondisclosure agreement prior to receiving the information. That amendment was added simply because all of us who deal with confidential data on a routine basis have had the experience of dealing with some parties who may be a little careless in their internal procedures. While they may not be making a public disclosure, they may allow a research assistant to look at it, and, in the process, disclose the data. Under the amendment to Section 5, that would not be permissible. It would be required that that research assistant or any other member of the staff of the consultant execute their own copy of the nondisclosure agreement.

The amendment to Section 6 prohibits a legislative committee from releasing to any person of the public any part of a report containing confidential information. Section 7 simply requires that the end date for the consultant retention of confidential information be set forth in the nondisclosure agreement. That is a key term. It should be included in the agreement, and that clarification is included in the amendment to Section 7.

As I mentioned earlier, we are not certain that even with these amendments the legislative committee is capable of providing adequate procedural limitations and protections for confidential information. We all understand there are differences between the approach taken to decision-making in, for example, a PUC process versus a legislative process. The basic concern is that once the bell is rung it cannot be unrung. Once a consultant knows a piece of information, they are not likely to forget that piece of information if it would later become useful even if they are working for an employer other than the legislative committee. We continue to have those concerns and we want you to be aware of them, but we did want to propose these amendments in an attempt to work with the Committee. We recognize the concerns that were raised through the A.C.R. 2

process and we recognize that A.B. 543 was an attempt to address those concerns.

Assemblyman Seale:
I have been contemplating this legislation for the last week or so. I'm gravely concerned about information that is going to go to a legislative body that I described in the hearing as a sieve. I don't know that the language in your amendment would necessarily close all of the holes in that sieve. It was brought to my mind recently when the State Department, which theoretically knows how to keep secrets, put out a document in a PDF (portable document) format recently about procedures in Baghdad that were easily breached with no intention on their part of doing that. I have some concerns about how we can receive this information and keep it private. I enter into any number of nondisclosure agreements, and what keeps me from blabbing is my reputation and the fact that I would get sued. I'm concerned that we're trying to fix something that may not be fixable.

Assemblyman Conklin:
I understand where Mr. Seale is coming from because it is a difficult situation any time you're dealing with competitive business. However, as a legislator, I would think a business would want us to have as much information as possible without sacrificing so that we make relatively good decisions with respect to the industry. It's a balance.

Assemblyman Parks:
I looked this over on several occasions and I have a difficult time finding any problem with this language. I think it truly responds to the issue that was brought forward in the A.C.R. 2 Committee and the work we were trying to do. I would like to commend all those who had a role in putting this together. I think it has a broader applicability than simply the regulated utilities. I am quite pleased.

Assemblyman Seale:
If the broadness was narrowed—if we moved closer to regulated industries specifically, would you be comfortable with that?

Assemblyman Parks:
When we asked for this bill draft to be put together, we wanted it to have a broad applicability. For example, during an interim we might want to look at health care and all the hospitals in the state. We would want information from that industry, and I hope this bill would afford the opportunity to get the information needed.

We didn't take this lightly. We wanted this for a legitimate reason whereby we would be able to make sound recommendations as an interim, standing, or legislative committee.

Assemblyman Seale:
I continue to be concerned that this is sensitive, proprietary information, and once it starts moving outside of the hands of the creators, it's going further than you intended it to go.

Assemblyman Parks:
The key individual is obviously the consultant here. The contract would be developed with a consultant to aggregate the data and provide the analysis to the legislative body. We have to understand that this is very serious and the information may have some profound implications if not handled properly.

Ann Pongracz:
It might be appropriate to consider whether to limit the target of such information requests to exclude natural persons. At this point it appears that the bill could apply to requests for information on an individual person or an entity. We should make it clear in the bill that individual people cannot be the target of this type of information request; if not, we fail to address a serious type of potential abuse.

We should think about whether this type of legislation is needed just for regulated industries or for all industries. I would ask the Committee to consider that regulated industries are already regulated, and the committee already has sources of information from other government agencies, and sources of perspective from the regulating entities, that would actually make this type of legislation less necessary for regulated entities than for less regulated entities. To the extent that there is not extensive state regulation of, for example, mining or farming, there might be more need for a legislative committee to have access to more detailed, in-depth confidential information than for a regulated entity such as a telecommunications business, where the PUC already looks at that type of information.

Assemblyman Seale:
I wonder if those industries that we might be interested in for interim studies in the future would be large enough to have an association that would naturally collect certain data that would be available to us. If you wanted to look at CPAs, you would go to the Nevada Society of CPAs and collect preexisting data

from them. Maybe the hospital associations have the type of data we're looking for.

Assemblyman Parks:
There is a good possibility that the hospital association collects a certain level of data. I'm sure with some of the federal requirements they have, they might have to file such reports, and such reports would be available. The same would go for the mining association and its industry. I think what we're looking for is a little more in-depth information and the ability to be able to generate that information so that we might better offer regulation.

Bob Gastonguay, Legislative Advocate, representing Nevada State Cable Telecommunications Association, Reno, Nevada:
Assemblyman Parks referenced regulated industries that had been requested to release some information. The message that I am about to deliver is from one of my clients. Cable television is not regulated by the State of Nevada. Cable television is regulated by the local franchising authorities and the FCC.

[Read prepared statement.]

> The information requested by the interim committee included a request for specific data relative to the type, the location, and how many strands of fiber we have installed throughout our network. It requested a narrative and design, including information about the type and manufacturer of our equipment, hub sites, and notes throughout our system. It requested information regarding how much of our fiber is being used and the designation of those uses. All of that information is considered competitively sensitive, proprietary design information, and therefore, information that we do not release to any public body, including those communities where we hold franchises. The information also included a request for a system plant map; again, an item that often includes design information that we consider competitively sensitive. The company is concerned with releasing competitively sensitive or proprietary design information, as this is a highly competitive industry with any number of other telecommunications companies, over builders, and wireless satellite providers entering the business. We believe the release of such information is a business decision, and are unwilling to release it to any entity where public access of that information is available.

I feel that under the proposed amendment, subsection 2(b) requires the consultant to work with any potential disclosing party to develop a mutually

acceptable nondisclosure agreement and excuses that party from the request for disclosure in the event the consultant and the party cannot agree on the terms of the agreement. This is a decision that my clients, the cable industry, would find useful in their preparation for either releasing or not releasing confidential information.

Robert Crowell, Legislative Advocate, representing Nevada Power Company and Sierra Pacific Power Company:
We agree with what Ann Pongracz said. As to Assemblyman Seale's question on the applicability of this legislation, if it makes good public policy, it ought to be applied in a broad spectrum. For those of us in the regulated industries, we proceed down this road with our regulators anyway and we think that this law is workable under the usual guidelines that we live with. If you find this to be good public policy, it should be applied in that manner.

Bob Bass, Legislative Advocate, representing SBC, Las Vegas, Nevada:
Having worked with Sprint, Sierra Pacific, and Southwest Gas on this amendment, we concur with Ms. Pongracz's comments today.

William Uffelman, Legislative Advocate, representing Nevada Bankers Association, Las Vegas, Nevada:
When I worked for the nuclear medicine industry, I had to compile data on behalf of the industry on the cost of doing various procedures so that we could respond to Medicare. As a member of the association representing the industry that was giving me the information, I had to execute these kinds of agreements relative to the information that I was then going to compile and make nonspecific and nonidentifiable. They didn't even trust the association to protect them. It's a very real concern when you're doing this kind of thing.

The language provided by Ann was "unless first removing all information." I'm suggesting it be "without first removing all information…"

Kent Lauer, Executive Director, Nevada Press Association, Carson City, Nevada:
We strongly oppose the amendment to Section 6 of the bill. Under that amendment, you'd be creating a secret legislative report. Under the amendment, the legislative committee could not release its report to the public. That's a taxpayer-funded report. The public has a right to review that report just as the members of the legislative committee would have the right to review it. What you're creating is a secret government document. Any report that is prepared by a legislative committee must be released to the public. We would strongly urge you not to include the Section 6 amendment as proposed.

Ann Pongracz:
I think the prior gentleman overstated what the amendment to Section 6 does. It does require that if the report contains confidential information, if that confidential information itself cannot be provided to the public, the rest of the report can be provided to the public, but not the confidential information. If we did not have that type of protection, it would give rise to precisely the type of concern that has been voiced to you all along. There are simply some types of information that entities are entitled to keep confidential. Commercially sensitive data is protected by the PUC, under the *Nevada Administrative Code*. There are many types of laws in Nevada that protect from public disclosure confidential, commercially sensitive information, and it would be crucial that the Legislature have the power to protect it if this bill were to move forward.

Chairman Denis:
What would happen if we just took out the words "in whole or in part"? Then it would read, "unless otherwise required by law, the committee may not release to any person or the public any part of a report containing confidential information provided to the committee by the consultant."

Ann Pongracz:
I think that amendment would be fine, and it would be consistent with the intentions of Sprint.

Chairman Denis:
Because we're talking about information in the aggregate, would the committee ever really get confidential information?

Ann Pongracz:
If this process is working properly, the committee would not receive the confidential information provided by a specific party. The information would be provided in the report by the consultant only in an aggregate form that then could be used for the committee's analysis.

Chairman Denis:
So would we really need Section 6? If they're never going to get confidential information would we even need to say that?

Ann Pongracz:
Perhaps I'm overly concerned here. However, I think it is a useful precaution to make it clear that the confidential information may not be disclosed either by the consultant or by the committee in its report.

Assemblyman Seale:
Notwithstanding the prior conversation, Mr. Lauer, you would still want the entire report released whether it had confidential information or not because it's been paid for and it's a legislative report?

Kent Lauer:
I think the chairman was correct that the information that's in the report will already be aggregated. It should not identify the plaintiff in the report. Otherwise, the rest of the provisions in this bill have not worked out. Once that report is released by the legislative committee, none of that confidential information should be tied to a particular target or entity, therefore it should be released. There is no proprietary concern at that point. It's been aggregated. I can't emphasize enough that it is a legislative report and the language in the report doesn't talk about confidential information that's tied to a particular entity or target. It simply says the legislative report, whole or in part, is confidential. I would really caution you if all these protections have worked that confidential information in the final legislative report should not identify a particular entity or company. It should be aggregated by the consultant. Therefore, there is no need for the confidentiality of the report as a whole.

Assemblyman Seale:
That should be true, but I'm not comfortable with that.

Ann Pongracz:
Mr. Lauer really did identify the problem when he used the word "if." That's what concerns us, and that's why we think Section 6 is needed.

Assemblyman Conklin:
I'm amazed at the circularity of this argument. On the one hand, we're saying that if we've done our work, it's not necessary to have this. On the other hand, if it's not necessary to have it, then why are we complaining about having it there in the first place if it only does that which we hope is not necessary? Although, are we really willing to leave it to hope?

Based on what I'm hearing, the bill is going to live or die based on what we do with Section 6. I understand Mr. Lauer's concerns and I agree; I think the public has a right to know as much information as possible, but there has to be protection in here for an individual, business, company, entity, stockholder, for information that is proprietary in nature. If it's not this language, then we need to find some other language that specifically addresses that issue so the whole report cannot be excluded, but information that may have been provided to a committee that is individual in nature does not get exposed to the public or to

the competition. That's the heart of the issue. The language in Section 6 is broad. Maybe there is a way to tighten that language so that it specifically says certain information cannot be disclosed or only information in aggregate can be provided in reports. I get the sense that Section 6 is going to be our sticking point because we have an obligation to provide information to the public. They pay for it and they ask us to do a job. At the same time, we also have obligation to keep businesses operating in a free market system whole and not do more damage to them than we do good for the public. It's a fine line.

Mr. Lauer, do you have a suggestion for Section 6 that alleviates your concern?

Kent Lauer:
Not at this time, but I can certainly work on it in the next day or two. I understand your concern and the concerns of the people who put together the amendment. On the other hand, we always have a concern when you give a government entity a reason to withhold information from the public. Of course, if you're talking about data specific to a particular company that could cause them harm, of course I see your concerns. I am afraid this will be used as a justification to not release a lot of that report, including data that should be released. I think what you're talking about is finding that balancing act.

Ann Pongracz:
I would ask Mr. Lauer to look at Section 4. It requires that the consultant, in utilizing confidential information for the report, use it in an aggregated form. It may be that if we retain Section 4 and delete the "in whole or in part" from Section 6, we may be in fairly good shape.

Kent Lauer:
Why would you want to withhold aggregated information? There is no harm in releasing that.

Ann Pongracz:
That is exactly my point. It should be only the aggregated information that makes it into the report. The only reason we need Section 6 is in the event that the requirement of Section 4 is not observed.

Jack Kim, Legislative Advocate, Representing Sierra Health Services, Las Vegas, Nevada:
We agree with the amendments that have been proposed, but we do have a couple of concerns. I can only talk about the health insurance and health care industries. We have a number of federal laws that would prevent us from providing certain data to the consultant, and I'm sure other industries have laws

that prevent them from providing certain private, confidential information. I would suggest that if you process this bill, a provision be added to indicate that if there is a federal law that preempts us from providing information to consultants, we do not have to provide that information.

George Ross, Legislative Advocate, Representing Chamber of Commerce, Las Vegas, Nevada:
The Las Vegas Chamber of Commerce has 600-800 members. We have members from virtually every type of business and industry in the state. We regard this as one of the most threatening bills to the competitive business environment we have seen this year. Even with the suggested amendments, we still feel that this does not provide the kind of protection a company in a competitive environment concerned about maintaining proprietary information could have confidence in. This is a state that, in theory, has a competitive free market business environment. In such a situation, other than looking at already regulated industries, there is really no need to be collecting this kind of information. We work in a world where the market generally takes care of the problems. Should we need an investigation of an industry, if you take the appropriate time, companies can come forward and tell what they are allowed to tell, given the rules of anti-trust and competition. There are industry consultants who already advise companies and investors who can be brought in, and from them you would probably find out far better information than you would get from one consultant with the kind of restrictions needed to get the kind of data you are after.

I worked for 25 years for an industry that was frequently the subject of legislative and congressional investigations, so some of this comes from my own experience. Large companies and large industries have an extraordinary amount of paranoia when it comes to giving anybody their competitive data. This Legislature seems to have a habit of picking out industries, most of whose participants are from out of state, making a target of them, and going after them. If you happen to be the industry of the session, to be subject to committees and their consultants who are after your information doesn't give you a great deal of comfort.

We feel that the bill ought to die. I understand where Assemblyman Parks is coming from. If I were to pick my favorite, most respected person in this Legislature, [Assemblyman] David [Parks] would be it, but in this particular bill I have to respectfully disagree when you apply it beyond the regulated industries.

If you were to go forward with this bill, there are a few areas where I would like to make suggestions. First, industries and companies would like to have some

confidence in this consultant. Consultants have their biases. They have their ideologies. They may want to get hired again. They may see things in the data that, to them, are abhorrent. They may see something that's going to happen because of somebody's strategy that they think is awful, and they cannot keep it quiet. I tried to figure out a way of picking a consultant that could give both sides some comfort. If I were to suggest that a company or industry could veto the consultant, then you'd never get a study; they would just keep vetoing every consultant. Likewise, if the company could choose it, you could veto every one. I would suggest, for example, that the industry and the committee could bring forth three candidates. The committee might suggest the first, and the industry could say yes or no. Then the industry could suggest one from its side, and the committee could say yes or no. They each could veto one from the other's panel. You have got two left, you put them in a bag and pick one, and that's your consultant. It's a way of being able to get rid of the radical types that both sides might pick, maybe forcing people toward the middle. It's a way to get consultants with whom you would have some confidence in handling your data. The trust here is incredibly important.

The issue of when confidential information becomes nonconfidential is really important. I agree with the amendment where it takes out Section 3(a). I'm very concerned about Section 3(b), where the consultant also obtains the information in a nonconfidential manner other than through submission by the person pursuant to this section. This is subject to incredible abuse. What can happen here is that the consultant can see the information in the confidential form and then find it in a public forum and then release it. There is a lot of information floating about which is false or true, but the company doesn't want anyone to know what is true or false because that company is planning a key strategy.

In the case of the legislative investigative committee, I know you feel a responsibility to take care of the state, and you need the right data to make the right decision for our people. Let's say there is a leak of insider information that impacts shareholder value and the share goes down 5 percent on Wall Street, every single member of that legislative panel could also be subject to insider investigations to see who leaked the information.

We are so concerned about the sieve-like nature of the public body that we want to be absolutely sure that this is taken seriously. Given that, we suggest the following. If it were tracked to a legislator, a leak would be an impeachable offense and an ethical violation. If it were tracked to staff, it would be a crime, they would be immediately fired, there would be an ethical violation, and he or she would not have whistleblower status. If it were tracked to the consultant, he again would have no whistleblower status, he would be fired and subject to

criminal prosecution. We don't feel it is enough that one merely signs these documents. We want to make sure if this bill were to go forward that the consultant and the legislators themselves take this as seriously as it is for the companies involved.

We are indeed a small state, but an amazing number of companies in many industries market, compete, and have facilities here. They may become subject to these investigations. If they were asked for their most important pricing information, cost structure information, competitive strategies, and long-range plans, they have to have confidence. Some of those companies would refuse and say, "Hold us in contempt and subpoena us," because they would not want to run the risk of giving out that information.

One of my jobs was director of industry analysis. Part of it was figuring out prices, supply and demand, and inventories. Part of it was figuring out what was going on with the competition. If you didn't have very many companies supplying information and you put out an aggregate report, it wasn't difficult to figure out what was going on among those companies, especially with today's technology. You do not keep secrets this way. For investors and companies, this is a very serious threat.

Chairman Denis:
We'll close the hearing on A.B. 543. Let's go into a work session.

Assemblyman Conklin:
From the mock-up under subsection 6, if the sentence were to read "unless otherwise required by law, the committee may not release to any person or the public any confidential…" We would be striking "in whole or in part" and striking "part of a report containing," so it would just read "…person or the public any confidential information provided to the committee by the consultant." I think that would alleviate the concerns of Mr. Lauer because we're not exempting the report, we're just exempting the confidential information that may be contained in the report. I would also like to see as part of an amendment that we add a federal preemption clause so that if there is information that, pursuant to federal law cannot be disclosed, there is protection. It is presumed that any federal law preempts any state law, but it's never a bad idea to have it in our statute as well, as we learned in Commerce and Labor this year when we had issues that we just left to the federal government and then the federal government wouldn't enforce them, so we had to put them back in our statute as well.

Mr. Ross had a concern that is important. That deals with the selection of the consultants, allowing both parties to delete certain consultants from the list, bringing some sort of moderation to the choosing of the consultants that all parties can have faith in.

Assemblyman Seale:
I can't get comfortable with this legislation with or without the amendments. I think the amendments just make it more complicated and we don't get to the root issue. This information has the potential of being disclosed and I'm not at all comfortable. I don't know that this can be amended into a usable document.

Chairman Denis:
We still need to get some things worked out. I'm going to not adjourn this meeting and come back at the call of the chair and see if we can work it out. I think some valid points have been made. This is a serious matter. We're talking about confidential information that businesses have to have in order to conduct business. I appreciate Mr. Ross' comments on the seriousness of the penalties. We need to consider all of that.

We are adjourned [at 3:28 p.m.].

RESPECTFULLY SUBMITTED:

_____
Angela Flores
Transcribing Attaché

APPROVED BY:

_____
Assemblyman Moises Denis, Chairman

DATE: _____

EXHIBITS

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

Date: May 3, 2005 **Time of Meeting: 2:00 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A	Agenda	
	B	Sprint (Ann Pongracz)	Testimony/Proposed Amendments