

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

**Seventy-Third Session
May 24, 2005**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments Subcommittee was called to order at 3:07 p.m., on Tuesday, May 24, 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
Mr. Bob Seale

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman David Parks, Clark County Assembly District No. 41

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Margaret McMillan, representing Sprint, Las Vegas
George Ross, representing the Las Vegas Chamber of Commerce; the Retail Association of Nevada; and the Hospital Corporation of America, Henderson
Ray Bacon, representing the Nevada Manufacturer's Association, Carson City

Scott Craigie, representing Sprint, Reno

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

Chairman Denis:

[Meeting called to order. Roll called]. Just for everyone's edification on what the plan is, we're going to first have Michelle Van Geel, our policy analyst, gives us a basic summary of what has happened so far on A.B. 543 and where we are at. It is my intention to then have Mr. Parks come forward and make remarks if he wishes.

Just as a reminder to those of you who are here, we are in a work session. We won't be taking any testimony. If we have questions, we will bring you up. Thank you.

Michelle Van Geel, Committee Research Analyst:

Assembly Bill 543 would provide for specified information to be confidential in order to assist legislative committees and studies in obtaining information. The subcommittee heard testimony on the bill and discussed amendments on May 3, 2005. Assemblyman Parks was here and reviewed the bill. Ann Pongracz from Sprint discussed some of their concerns, as well as the concerns of numerous other parties.

In front of you is a mockup amendment to the bill. The blue printing is the proposed amendment (Exhibit B.) I think Mr. Parks is here to go over any questions you had or answer any comments.

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

I have not seen your markup of the bill. My comments aren't specific to that. I would like to start off by commending Ann Pongracz and the members who suggested an amendment to A.B. 543. I think they did a lot of work and the work that they did was very, very good.

As far as my comments go, I know there was opposition testimony provided on the bill. I don't know if everyone fully understands what the bill actually does. It provides for proprietary information to be protected as confidential when it is provided to a legislative committee. The bill does not require that any information be provided at all. However, some witnesses who testified at the hearing evidently believed that A.B. 543 did require that information be provided. As for the suggestion that the bill be limited in scope by making it

applicable only to regulated businesses, it is possible that those asking for that limited scope believe that by limiting the bill to a regulated industry, the bill would require only regulated industries to provide information and would not require non-regulated industries to provide the same kind of information. That would not be the result.

Whether or not a person is required to provide information is not in any way governed by this bill. With that, it is not a consequential bill for this session, obviously. When we took it up as part of the interim study committee proceedings during the last interim, it was as a result of seeing situations where different agencies or regulated industries felt that they would like some added protection. That is exactly what this bill would have done.

Assemblyman Seale:

Mr. Parks, you just said something that sort of piqued my interest. You said that they are not required to give information. Could you explain that more fully to me?

Assemblyman Parks:

That is exactly what the bill does. The bill states that when there is a legislative committee or an interim committee studying a certain issue, what we wanted to be able to do was provide a certain level of protection to those individuals who would provide us with information, by doing it through a third party. That way, it would not be subject to the Open Meeting Law and being turned into a public document.

The bill just creates another mechanism so that persons who are willing to provide certain information are allowed the opportunity to submit that information, knowing that, unless it can be combined with other information and not reveal the proprietary nature of the information, it would not be made publicly available.

Assemblyman Seale:

So you are suggesting that any information would be voluntary?

Assemblyman Parks:

That is correct.

Assemblyman Seale:

So anyone objecting would not provide that information?

Assemblyman Parks:

That is correct. Only those parties who are willing to provide the information would do it. In so doing, in providing that information, they would be given the assurance that anything that is of a proprietary nature would be protected as best as possible.

Assemblyman Seale:

So the people who were objecting to the bill could conceivably just not give the information at all and their problem is solved?

Assemblyman Parks:

That is correct, in the way I read the bill, if they wish not to provide the information. We had that happen during the last interim study from which this bill was generated.

Assemblyman Seale:

If that is the case, what exactly does the bill do? Would you anticipate people voluntarily giving this information? That must be your position.

Assemblyman Parks:

Yes, that is my position. When we had the public communications study during the last interim, we found that most telecommunications companies were very willing to provide the information. When it was learned that we use an independent third party to handle the information, they were satisfied with that.

Assemblyman Seale:

Thank you.

Chairman Denis:

If you're trying to get information from an industry strictly voluntarily and there are five companies and only two or three give you that information, how useful would that be? Secondly, because it's confidential, would that, perhaps, create a problem with someone trying to figure out who gave what information and then it would not be confidential information anymore?

Assemblyman Parks:

That's a very good question. If you had five businesses and only two were willing to provide their information, it would be hard to not know, at least for two of them, what the other company's data was. They could extrapolate from their own information that they themselves provided and find out what the figures were for the others. It would be important that, of the five, that at least three of them were willing to participate.

Chairman Denis:

With the telecommunications industry, were you able to get enough information to truly be able to do the things that you were hoping to do with that commission?

Assemblyman Parks:

I think that we were able to get some data. It might have some use. But for the most part, no, we were not able to get as good data as we had hoped to get. And this is what brought forward Assembly Bill 543.

Assemblyman Conklin:

Have you checked with the folks who were reluctant to give information as to whether or not this bill would satisfy them enough so they would give information in future cases?

Assemblyman Parks:

I think the fact that we had members of the telecommunications industry come forward and put a lot of time into recommending revision to the bill is an indication they support the bill. I'm presuming that they would remain supportive. I know they had some reservations with the original bill. With regard to other parties, I think there was some misinformation, and I thought certain parties were misinformed when they testified previously.

Chairman Denis:

Any other questions? Because we are in a work session, I would like to inquire what the desire is of the subcommittee is at this point. Do we wish to get any more information? Any other questions? We have a room full of people who I'm sure could help provide answers or insight if you are looking for some additional information.

Assemblyman Conklin:

Mr. Chairman, if I might ask Ms. Van Geel, is this amendment that was handed out, dated March 29, 2005, the amendment that was presented to the subcommittee? Is this the amendment Mr. Parks just spoke of, that all parties are in agreement to?

Michelle Van Geel:

Yes. It is the same amendment that was passed out at the prior subcommittee meeting. However, when I was looking at my first version of it, I did have other notes which were written on it, from our last meeting. On the second page, first paragraph, I had the word "unless" crossed out and replaced with "without." At the bottom of that page, there was also some discussion about "whole" and "in

part” and replacing it with “any.” This is in reference to the confidential information. To remove that phrase, someone may have spoken to Mr. Parks after the hearing about clarifying that language. I don’t know if anyone else’s notes reflect that.

Chairman Denis:

I think that issue was brought up by Mr. Lauer, from the Nevada Press Association.

Assemblyman Seale:

If providing information is indeed voluntary—how does that affect your situation relative to this bill?

Margaret McMillan, representing Sprint, Las Vegas:

If you recall, our general counsel, Ann Pongracz, proposed the amendment. Even in her testimony, she said that there should be some caution with those amendments. Certainly, if you say it is voluntary, as we all know from dealing with the Legislature, dealing even with the regulated industry like the Public Utilities Commission, if a governing body asks for some information, we, wherever possible, try to provide it. It is unlikely you will hear of very many people saying, “No, we aren’t going to give it to you because it’s voluntary.” However, that was the case regarding ACR 2 of the 20th Special Session, because as a regulated industry, we generally provide much of the information that is asked for by the Public Utilities Commission on a regular basis. For most of the questions they ask, it wasn’t a problem for us to provide it. It was for those non-regulated companies, and they did not provide it.

Assemblyman Seale:

Thank you very much. That is helpful. I would like to hear from Mr. Ross because he was quite vocal on it.

Assemblyman Seale:

Essentially the same question, coming from a different point of view that you might have. On a voluntary basis, where does this put you and the group you represent?

George Ross, representing Las Vegas Chamber of Commerce; Retail Association of Nevada; and the Hospital Corporation of America:

Clearly, it would explicitly be voluntary. To be honest, it would probably make a difference to some people, but I think for the whole, speaking for the Retail Association, the Las Vegas Chamber of Commerce and the HCA, we would find, on the whole, that we still object to the idea of the bill. We are concerned

that there isn't really an option. When a legislative body asks for information, how truly voluntary is it?

We are concerned with how voluntary the information actually is. If a legislative body who has the ability to exercise coercive power of you, the next time they meet asks for our information, typically we feel you want to make them happy. At the same time, as I expressed before, we have a great number of competitive compulsions that make us very worried. We have a concern with the bill as it is because of that reason. We have a concern with anything being particularly confidential in this building.

I would have to say that I appreciate what Mr. Parks has done here. I can see the differences in the bill. I can see some protections that weren't there before. I would be less than honest if I didn't say I see those. I recognize them. I think we all appreciate them. At the same time, several items that I mentioned in my prior testimony aren't covered here. One is the question of who the consultant is or whether you have a choice in the consultant. Secondly, though I may have been a little strong in my requests for sanctions, there are no sanctions if there is a leak. It is clear that leaks aren't good. It's made clear here that you aren't supposed to leak. But there is no sanction for leaking data that could be incredibly important to a company. In particular I'm thinking of large corporations with a lot of operations in this state, like hospitals, banking, and retail chains, and increasingly, more and more manufacturing companies whose competitive information would be here.

The other concern is one that was very well expressed by Helen Foley in the first hearing. Essentially, it was brought up again by Chairman Denis. If only some companies give data, you really can find out an awful lot, even with aggregated data. The question becomes, if you only have three out of seven give the data, 1) How useful is it? And 2) Are you giving away the store when you give away the data? That is going to be a real concern. I would say, again, that I would be less than honest if I didn't say that I recognize, particularly in section 2(b) of the amendment, that that's a protection. I have to be honest. That is a protection for the companies, but they have these other things to consider and other things to worry about, as well, that will certainly be driving a lot of these companies.

Assemblyman Conklin:

Mr. Ross, you mentioned in the first part of your testimony that when an elected body asks someone to give information, there is a certain amount of pressure to come forward with that information for fear of what might happen if you don't. My question to you then is, if that pressure already exists, and this is

voluntary, wouldn't you rather have this so that you at least have something legislatively out there to protect you somewhat? Because, basically, right now, even without this, you're influenced one way or the other to come forward, correct. What this bill seems to be doing, at least according to Mr. Parks' explanation, is to say, "We want to try to protect you as much as possible." There are two sides to your argument, and I understand what you are saying, but I'm also looking at it from the other side. Right now you are compelled to come forward anyway, whether it's imaginary or actual. If people believe that, then wouldn't it be better to have that safeguard in statute?

George Ross:

There are two things. One is, I can safely say where my clients are concerned, is that while having such a bill has safeguards that are not in statute currently, it would be a little tougher to not come forward with the data. It really is a philosophical question to how much the Legislature should be investigating industries that operate in a free market and should be operating in a free market. What business is it of the legislature to start poking into everything going on economically, anyway?

Secondly, you would be under a little more pressure to produce the data if you had this protection. Thirdly, I think I can clearly say, for my clients, is that they would be concerned that this may facilitate and encourage more legislative bodies to seek more and more data as time went on.

Chairman Denis:

What is the pleasure of the committee?

Assemblyman Conklin:

I think this is one of those types of bills I'm rather ambivalent on. I understand both sides of the issue. There is validation in both cases. Quite frankly, I'm ambivalent. What does everyone else want to do on it?

Assemblyman Seale:

Mr. Chairman, I continue to have some great concerns about this. But if you would like a motion, I would move that we refer this bill back to the full committee without a recommendation.

Chairman Denis:

I just have one comment. I wanted to share appreciation for Ms. McMillan and those who have worked on the amendment. I think they provided a really good way for being able to get some information. As mentioned, there is never a

foolproof way when you are dealing with confidential information. However, I do appreciate all the work that went into that.

ASSEMBLYMAN SEALE MOVED TO REFER TO THE FULL COMMITTEE WITHOUT RECOMMENDATION ASSEMBLY BILL 543.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Denis:

We don't have a lot of time left, but we usually take public comment. Even though we aren't in a hearing right now, if there is anyone who would like to offer any public comment, and if you would be brief, I would be willing to take some at this point.

Ray Bacon, representing Nevada Manufacturer's Association, Carson City:

One of my counterparts in another state had a situation that relates to industrial espionage. While this legislation is trying to prevent that somewhat it is not a huge step. My counterpart's company had one critical part of their operation, which, fundamentally, was the key to the entire company's profitability. They had figured out a unique process that no one knew. When camera phones came out, they ran a factory tour through one of their company representatives. He photographed the key process—it was at their competitor's place, as was their company representative, in ten days. So this confidentiality thing is becoming critically important from an international, competitive basis. Their competition, by the way, was out of country as well. That's the reason we're sensitive. The technology today means that if the information gets out, it can be gone in a heartbeat.

Chairman Denis:

Anyone else?

Scott Craigie, representing Sprint, Reno:

As an aside, I was a former chairman of the Public Service Commission, back in the day. Of course, it's called the Public Utilities Commission now.

I have here, from Ann Pongracz, an e-mail that she sent out to a number of us inside our group. I just want to share this experience with you. This was a case where the Oregon Public Utilities Commission had a number of parties, some competitive, some fully regulated, and in that situation, everyone agreed to and signed full confidentiality agreements that were put together by counsel. In that

environment, as the ruling started to come together, and I don't know if it came down or just was released, some of the parties were adversely affected by the ruling, which released data for the regulated utilities. The commission itself commented on it, making a statement that it would make it much more difficult in the future for them to ask regulated and unregulated entities to come together and share information among all them, so they can all go to the table and work with a database.

It is very hard to control the behavior of parties in either of the two venues, it's regulated or unregulated. The regulated entities, and I know this from having been chairman of the Commission, have to come back again and again for rate increases and for changes in any kind of business activity. They are really vulnerable because they have to maintain that citizenship. Obviously this doesn't mean there are bad guys and good guys by category, many of the non-regulated entities are pretty free of the reach of the state government and it makes it much more scary. Regulated entities feel much more vulnerable in this setting. This is how Sprint feels now. We're very concerned about what the long-term ramifications are. Again, Mr. Parks has done something here that came out of that interim study. We appreciate the effort that is there. He has really done a good job here. In the end, we are very concerned about our vulnerabilities in a situation like this.

Assemblyman Conklin:

Just in response to some public comment and to my colleague, Mr. Seale. There is always a balance to be struck between this body and everyone else who comes before us or works with the people who live in this state. On the one hand, I think there is a lot of sympathy for business and technology and the fact that your competition is shopping you, finding out as much information as they can, and using that information against you. It is the nature of business and as much as we can do to protect ourselves, it is important to do so. However, I would remind everyone that has a concern on that regard that this body has a concern too, and that concern is that the market does operate in a fashion that is best for consumers and best for the people who operate in this state. When we ask you for information, we don't do so in a manner that is intended to harm you; it's in an attempt to make things better not only for you, but for the people who live in this state, who buy your products, who use your services. We are not asking to be detrimental to your business. We are asking because we believe there is information there that will help us make better decisions about or for the State of Nevada.

Chairman Denis:

Anything further? Seeing no further business to come before us, this meeting is adjourned [at 3:40 p.m.].

RESPECTFULLY SUBMITTED:

Matthew Baker
Transcribing Attaché

APPROVED BY:

Assemblyman Mo Denis, Chairman

DATE: _____

EXHIBITS

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

Date: May 24, 2005

Time of Meeting: 3:00 p.m.

Bill	Exhibit	Witness / Agency	Description
543	A		Agenda
543	B	Michelle Van Geel, LCB	Proposed Amendment